COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE NO. **2006-KP-01543-COA**

DENNIS JEFFERSON
APPELLANT/Appellant

VS.

STATE OF MISSISSIPPI
APPELLEE/PLAINTIFF

APPEAL FROM THE CIRCUIT COURT OF
YAZOO COUNTY, MISSISSIPPI

SUPPLEMENTAL BRIEF OF APPELLANT

ORAL ARGUMENT NOT REQUESTED

BY: Dennis Jefferson

Dennis Jefferson
Unit 29-B, #123551
Parchman, Ms 38738

Appellant, pro se

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I.

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not specifically request oral argument in this case as it is believed that the issues are capable of being adequately briefed by the parties. However, in the event the Court believes oral arguments would be helpful or beneficial to the Court then Appellant does not oppose oral argument and would in the court's discretion, as that counsel be appointed to deliver such oral argument for Appellant

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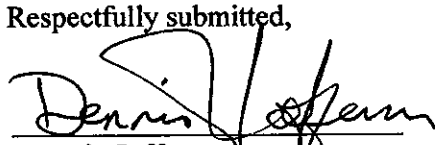
II.

CERTIFICATE OF INTERESTED PERSONS

The undersigned Appellant Dennis Jefferson, certifies that the following listed persons have interested in the outcome of this case. The representation are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Appellant Dennis Jefferson, Appellant pro se
2. Honorable Jim Hood, and staff, Attorney General
3. Honorable Mike Smith, Special Circuit Court Judge
4. Honorable James H. Powell, Assistant District Attorney
5. Honorable Brent Hazzard, Defense Attorney at trial

Respectfully submitted,

BY: 

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III.

STATEMENT OF THE ISSUES

ISSUE ONE

Whether verdict of Jury was against overwhelming weight of evidence.

ISSUE TWO:

Whether trial court erred in failing to grant lesser included offense instruction.

ISSUE THREE:

Whether defense counsel was ineffective in failing to request lesser included offense instruction.

ISSUE FOUR:

Whether evidence was insufficient to prove Appellant committed crime charged.

ISSUE FIVE:

Whether Appellant was denied fair trial because of the cumulative effect of the claims stated herein.

IV.

STATEMENT OF INCARCERATION

The Appellant is presently incarcerated and is being housed in the Mississippi Department of Corrections at the Mississippi State Penitentiary, in service of the term imposed in this case. Appellant has been continuously confined, in regards to such sentence, since date of conviction and imposition by the trial court. Appellant is a first time offender with no prior criminal record.

V.

STATEMENT OF CASE

On October 6, 2005, an indictment was filed in the Yazoo County Circuit Court charging Appellant, Dennis Jefferson, with house burglary by breaking and entering a dwelling house in Yazoo City, Mississippi. Robert "Bobby" Huffman[1] and Lenoria McGee was also charged with such offense and as co-defendants. (C.P. 3)

Appellant was represented at trial by Honorable Brent Hazzard of Jackson, Mississippi. Upon conviction, Appellant was sentenced to serve a term of seven (7) years in the custody of the Mississippi department of Correction.

Being aggrieved by the verdict and sentence, Appellant Jefferson perfected an appeal of the conviction and sentence of the Circuit Court of Yazoo County, Mississippi.

Appellant is now proceeding with the preparation and filing of his brief in this court pro se. This brief will contain a total of five (5) separate claims for reversal.

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[1] Robert "Bobby" Huffman was also charged as being a habitual offender where he had been convicted of receiving stolen property on November 25, 1996, and grand larceny on January 5, 1998.

VI.
ARGUMENT

Issue No. One

Whether verdict of Jury was against overwhelming weight of evidence

The verdict of the jury was against the overwhelming weight of evidence and contrary to law. The record will clearly demonstrate that the trial court should have granted Appellant Jefferson's Motion for directed verdict, or alternative a new trial. Appellant Jefferson's defense at trial was actual innocence. Appellant Jefferson moved for a directed verdict at the end of State presentation of evidence and at the close of the State's case, due to the fact that the State failed to prove Appellant Jefferson was either burglarized the home nor was aware that any burglary would take place or had taken place. Moreover, the State failed to present evidence that anyone had actually broke and entered the home with the intent to commit a crime therein.[2] Appellant Jefferson never entered upon the premises nor had any knowledge that a crime was being intended. Moreover, Appellant Jefferson was not aware that items had been taken from an open garage located at 4460 Whites Lane, Yazoo City, Mississippi.

In Booker v. State, 716 So.2d. 1064 (Miss. 1998), the Supreme Court discussed the law and requirements of burglary of an occupied dwelling under this Miss. Code Ann. Section 97-17-23. The Court recognized that, in order for such crime to suffice, there must be a breaking and entering with the intent to commit a crime, be it a misdemeanor or felony, therein and the

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[2] The statute in which the state charged Appellant under is clear. It provides the following:

§ 97-17-23. Burglary; breaking and entering inhabited dwelling.

Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, whether armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling house or not, with intent to commit some crime therein, shall be punished by imprisonment in the Penitentiary not less than three (3) years nor more than twenty-five (25) years.

building burglarized must be a dwelling house, not a shed or garage. Pool v. State, 764 So.2d 440 (Miss. 2000).

The testimony of Lenoria McGee, a witness for the state, demonstrates that all which Appellant was told by Huffman was to stop at a house and after a truck was coming up the road Huffman told Appellant to pop the hood. This testimony hardly makes Appellant guilty of a crime and such testimony exonerate Appellant of burglary or being an accomplish to burglary. McGee was in the same car and she testified that nothing was told to Appellant but to "stop at this house" (Tr. 59) Under the theory that Appellant must have known something was wrong after Huffman told him to pop the hood, that would be evidence of accessory after the fact of burglary, not burglary. The state's proof was lacking and the trial court should granted a directed verdict. Whether Huffman entered a shed, garage or the home would not matter in this instance since Appellant never exited his vehicle and never entered upon the premises. Moreover, Appellant had no knowledge of what was to take place. Huffman did not tell Appellant that this was not his house or that the people living there had not given him the property. Ms. McGee testified that she didn't know what was being talked about after they drove away from the Whites Lane address. (Tr. 60)

The prosecution never proved burglary against Appellant. At most, the prosecution may have presented evidence that Appellant was an accessory after the fact. never heard Appellant and Mr. Huffman talking about anything.

The state indicted Appellant as having burglarized the dwelling house located at 4460 Whites Lane, Yazoo City, Mississippi. However, after the presentation of the state's case to the jury, the evidence failed to show that a dwelling house was burglarized or broken into. Even the

owner of the home testified that the items taken was taken from an open garage. The prosecution stated the following in response to the defendant's motion for a directed verdict:

> We would agree, based upon the evidence, since the storage shed was not entered, that there is not a dwelling of the premises itself. However, that still leaves the lesser included felony of burglary of another building, because the shed was entered as well, and you had stuff stolen out of the garage. There was an attempt to steal stuff out of the shed, and we believe there is enough top go on the jury on the burglary of another building charge. (Tr. 108)

The problem with the state's response here is that there was no "Burglary of another building charge." The trial court erred in denying Appellant Jefferson's motions for a directed verdict since Appellant was indicted and charged with one offense, burglary of an occupied dwelling pursuant to Section 97-17-23 of the Mississippi Code of 1972. The state never attempted to amend the indictment not to charge Appellant with the "burglary of another building charge." Had the state timely made such an amendment then the Appellant would have had notification of what building, other then the occupied dwelling, was being alleged to have been burglarized so that Appellant could put on an adequate defense. Not having never entered the premises Appellant would not have been familiar with other buildings. The state started it's argument with Appellant having been an aider and abettor. However, the indictment fail to streee this offense. The state charged Appellant with burglary of an occupied dwelling, house burglary, in violation or Section 97-17-23 of the Mississippi Code of 1972. Appellant Jefferson would argue that the State did not prove its prima facie case because, as the state admitted, the evidence was insufficient for a jury to find him guilty of burglary of an occupied dwelling, house burglary, in violation or Section 97-17-23 of the Mississippi Code of 1972. Appellant would maintain that he did not participate in the felony committed or encourage the crime and, therefore, lacked the

community of purpose or mens rea necessary to be found guilty of burglary of an occupied dwelling, house burglary, in violation or Section 97-17-23 of the Mississippi Code of 1972. Further, that state did not prove that Appellant an aider and abetter or an accessory before the fact. It is uncontroverted that Appellant drove the vehicle and raised the hood on the vehicle after a truck was approaching. Appellant was not a lookout for Huffman. However, the jury was charged with determining whether Appellant committed the crime of burglary of an occupied dwelling, house burglary, in violation or Section 97-17-23 of the Mississippi Code of 1972. If it was determined that Appellant did not, in fact, commit the crime of burglary of an occupied dwelling, house burglary, in violation or Section 97-17-23 of the Mississippi Code of 1972, the trial court should have granted a directed verdict irregardless of the state's "burglary of another building" argument. Spears v. State, 942 So.2d 772, 777 (Miss. 2006). Burglary of a building other than a dwelling is not a lesser-included offense of burglary of a dwelling. Smith v. State, 725 So. 2d 922, 929 (¶ 16) (Miss.Ct.App. 1998).

Finally, when the state rested its case, Appellant Jefferson moved for a directed verdict due to the fact that no evidence had been presented by the state showing that, as defense counsel presented it, "have not proved my client broke into the house of the Allens. They have not proved by client broke into the storage shed. They have not proved that a dwelling was broken into. Mrs. Allen herself testified that the items were in the open garage. There are pictures of the garage. Mississippi Supreme Court I do believe has clearly ruled that the burglary, must break into a dwelling, and a closed structure. The storage room must be attached to the house. It cannot b e in mere proximity. The Mississippi Supreme Court has held that. The section itself defines a dwelling as something someone lives in. They do not list the storage room. There was nothing

taken from the storage room, and the only person identified as taking anything was Mr. Huffman. Based upon this, Your Honor, we ask for a directed verdict. Thank you. (Tr. 105-106).

As previously pointed out, the state agreed with the basis argument presented by the defense in regards to the motion for a directed verdict. (Tr. 107) However, the trial court evaded to Miss. Code Ann. Sec. 97-17-31 which defines a dwelling house. (Tr. 108) Under this State's burglary statute a dwelling is (1) a structure presently inhabited, or (2) a structure from which the regular inhabitants have temporarily absented themselves, with the intent to return. Carr v. State, 770 So.2d 1025 (¶ 12) (Miss.Ct.App. 2000); Pool v. State, 764 So.2d 440 (¶¶ 13, 15) (Miss. 2000).

Additionally, as the record clearly shows, the trial court never determined where the items were taken from nor whether there was any breaking and entering with the intent to commit a crime therein before the motion was actually denied. (Tr. 109)

Appellant Jefferson asserts that the state never met its burden of proof showing that there was a burglary of a dwelling or that there had been a breaking any entering with the intent to commit a crime therein. The testimony of Mrs. Allen demonstrates this.

Appellant Jefferson asserts that the verdict of the jury was against the overwhelming lack of evidence of guilt and contrary to law. In the case of Cherry v. State, 386 So2d. 203, The court reversed and rendered the conviction due to the fact that the verdict of the jury was contrary to the overwhelming weight of evidence. Quoting Burks v. United States, 437 U.S.1, 98 S.Ct. 2141, 57 L.Ed 2d 1 (1978).

The conviction and sentence for the offense against Appellant Jefferson should be vacated and Appellant Jefferson should be discharged to avoid a miscarriage of justice. The

conviction and sentence, on the basis of the evidence presented, is in violation of Appellant's constitutional rights to due process of law. U.S.C.A. 5, 14 & Miss. Const. Art. 3§14.

Issue No. Two

Trial court erred in failing to grant lesser included offense instruction.

The trial court granted an amended instruction to allow the jury to find Appellant guilty of burglary of a storage building. (C.P. 13) Jefferson was indicted for the offense of Section 97-17-23 of the Mississippi Code of 1972 which entails the crime of burglary of an occupied dwelling. The Supreme Court has firmly held that burglary of a building other than a dwelling is not a lesser-included offense of burglary of a dwelling. Smith v. State, 725 So. 2d 922, 929 (¶ 16) (Miss.Ct.App. 1998). Thus, under same holding, Instruction No. 7 would also be improper where the charge was never amended and the state actually put Appellant on trial for the offense of violating Section 97-17-23 of the Mississippi Code of 1972. (C. P. 14) This statute, as Appellant

Issue No. Three

Whether Defense Counsel was ineffective in failing to request lesser included offense instruction.

Defense counsel never requested an instruction for the lesser included offense of accessory after the fact, attempted petit larceny, nor trespassing. The trial court granted instruction 6 and 7 (C.P. 13-14). These instructions pertained to Burglary. Burglary is not a lesser offense to Burglary of an occupied dwelling. Smith v. State, 725 So. 2d 922, 929 (¶ 16) (Miss.Ct.App. 1998). In Richard v. Missouri Pacific R. Co., 186 F. 3d 1273 (1999), the court held that jury instructions may not serve to mislead jury in any way and there was not instruction sought nor grant on attempted petit larceny, petit larceny nor trespassing. There was evidence

presented at trial to demonstrate that attempted petit larceny, petit larceny or trespassing could have been found from the evidence but yet there was no instruction filed to that effect.

To prevail on an ineffective assistance of counsel claim the complaining party must satisfy the well-established two prong test. First the party must show that counsel's performance was objectively deficient. Then the party must show that, but for counsel's deficient performance, there is a reasonable probability that the result of the trial would have been different. Gilliard v. State, 462 So.2d 710, 714 (Miss. 1985).

In the case at bar, Appellant's counsel never attempted to secure a lesser included offense for the charge in which there was evidence introduced at trial which would have allowed the jury to return a lesser included offense verdict. The jury could have found Appellant guilty of petit larceny, trespassing, or being an accessory to such charges. Because of the ineffectiveness of defense counsel, this option was not provided to the jury The state admitted that Huffman trespassed upon the property and attempted to steal. Moreover, there was testimony from McGee that Huffman took some inexpensive items in a bucket from the property. Clearly, there was evidence to support these lesser included offenses.

It is clear that Appellant Jefferson was prejudiced by his attorney's failure to present such lesser included offense instructions.

This Court should conclude that here counsel rendered ineffective assistance of counsel and that such ineffectiveness prejudices Appellant's conviction in such a way as to mandate a reversal of conviction as well as the sentence imposed. Defense counsel was charged with knowing the law and being familiar with the record and evidence.

In Jackson v. State, 815 So. 2d 1196 (Miss. 2002), the Supreme Court held the following in regards to ineffective assistance of counsel:

> Our standard of review for a claim of ineffective assistance of counsel is a two-part test: the Appellant must prove, under the totality of the circumstances, that (1) his attorney's performance was deficient and (2) the deficiency deprived the Appellant of a fair trial. Hiter v. State, 660 So.2d 961, 965 (Miss.1995). This review is highly deferential to the attorney, with a strong presumption that the attorney's conduct fell within the wide range of reasonable professional assistance. Id. at 965. With respect to the overall performance of the attorney, "counsel's choice of whether or not to file certain motions, call witnesses, ask certain questions, or make certain objections fall within the ambit of trial strategy" and cannot give rise to an ineffective assistance of counsel claim. Cole v. State, 666 So.2d 767, 777 (Miss.1995).
>
> [7] [8] [9] ¶ 9. Anyone claiming ineffective assistance of counsel has the burden of proving, not only that counsel's performance was deficient but also that he was prejudiced thereby. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Additionally, the Appellant must show that there is a reasonable probability that, but for his attorney's errors, he would have received a different result in the trial court. Nicolaou v. State, 612 So.2d 1080, 1086 (Miss.1992). Finally, the court must then determine whether counsel's performance was both deficient and prejudicial based upon the totality of the circumstances. Carney v. State, 525 So.2d 776, 780 (Miss.1988).

Defense counsel allowed the state to present jury instructions which were inconsistent with clear rules of law. The Court has held that Burglary is never a lesser included offense to Burglary of an occupied dwelling. Smith v. State, 725 So. 2d 922, 929 (¶ 16) (Miss.Ct.App. 1998). However, the defense counsel never objected to such instruction number 6 and 7 being granted. These instructions clearly mislead the jury since they allowed the jury to bring back a verdict for burglary when the Court has held that burglary is not a lesser offense to house burglary and therefore was an inconsistent verdict to the charge in the indictment.

Defense counsel's performance was so defective it caused fundamentally unfair outcome of trial. This is reversible error. This is violation of Appellant U.S.C.A. 6 & Miss. Const. Art.

3§26. Conviction and sentence shall be vacated and Appellant shall be discharged. See Strickland v. Washington, 466 U.S. 668, 687.

Appellant Jefferson respectfully ask this court to review the facts of this case with the decisions rendered by the Supreme Court regarding the lesser offense to house burglary.

In Ward v. State, 708 So.2d 11 (Miss. 1998) (96-CA-00067), the Supreme Court held the following:

> Effective assistance of counsel contemplates counsel's familiarity with the law that controls his client's case. See **Strickland v. Washington**, 466 U.S. 668, 689, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674 (1984) (noting that counsel has a duty to bring to bear such skill and knowledge as will render the trial reliable); see also **Herring v. Estelle**, 491 F.2d 125, 128 (5th Cir.1974) (stating that a lawyer who is not familiar with the facts and law relevant to the client's case cannot meet the constitutionally required level of effective assistance of counsel in the course of entering a guilty plea as analyzed under a test identical to the first prong of the **Strickland** analysis); **Leatherwood v. State**, 473 So.2d 964, 969 (Miss.1985) (explaining that the basic duties of criminal defense attorneys include the duty to advocate the Appellant's case; remanding for consideration of claim of ineffectiveness where the Appellant alleged that his attorney did not know the relevant law).

In the instant case, Appellant Jefferson's defense counsel failed in his duties to adequately represent Jefferson during the trial and prior to the trial when counsel allowed instructions to be presented and granted which did not legally jive with the indictment and the evidence and where counsel failed to seek and secure a proper lesser included offense instruction.

To successfully claim ineffective assistance of counsel, the Appellant must meet the two-prong test set forth in Strickland v. Washington, 466 U.S. 668,687 (1984). This test has also been recognized and adopted by the Mississippi Supreme Court. Alexander v. State, 605 So.2d 1170, 1173 (Miss. 1992); Knight v. State, 577 So.2d 840, 841 (Miss. 1991); Barnes v. State, 577 So.2d 840,841 (Miss. 1991); McQuarter v. State, 574 So.2d 685, 687 (Miss. 1990); Waldrop v.

State, 506 So.2d 273, 275 (Miss.1987), aff'd after remand, 544 So.2d 834 (Miss. 1989); Stringer v. State, 454 So.2d 468, 476 (Miss. 1984), cert. denied, 469 U.S. 1230 (1985).

The Mississippi Supreme Court visited this issue in the decision of Smith v. State, 631 So.2d 778, 782 (Miss. 1984). The Strickland test requires a showing of (1) deficiency of counsel's performance which is, (2) sufficient to constitute prejudice to the defense. McQuarter 506 So.2d at 687. The burden to demonstrate the two prongs is on the Appellant. Id. Leatherwood v. State, 473 So.2d 964, 968 (Miss. 1994), reversed in part, affirmed in part, 539 So.2d 1378 (Miss. 1989), and he faces a strong rebuttable presumption that counsel's performance falls within the broad spectrum of reasonable professional assistance. McQuarter, 574 So.2d at 687; Waldrop, 506 So.2d at 275; Gillard v. State, 462 So.2d 710, 714 (Miss. 1985). The Appellant must show that there is a reasonable probability that for his attorney's errors, Appellant would have received a different result. Nicolaou v. State, 612 So.2d 1080, 1086 (Miss. 1992); Ahmad v. State, 603 So.2d 843, 848 (Miss. 1992).

In Strickland v. Washington, 466 U.S. 688, 687 (1984), the United States Supreme Court held as follows:

> In assessing attorney performance, all the Federal Courts of Appeals and all but a few state courts have now adopted the "reasonably effective assistance" standard in one formulation or another. See Trapnell v. United States, 725 F.2d 149, 151-152 (CA2 1983); App. B to Brief for United States in United States v. Cronic, O. T. 1983, No. 82-660, pp. 3a-6a; Sarno, [466 U.S. 668, 684] Modern Status of Rules and Standards in State Courts as to Adequacy of Defense Counsel's Representation of Criminal Client, 2 A. L. R. 4th 99-157, 7-10 (1980). Yet this Court has not had occasion squarely to decide whether that is the proper standard. With respect to the prejudice that a Appellant must show from deficient attorney performance, the lower courts have adopted tests that purport to differ in more than formulation. See App. C to Brief for United States in United States v. Cronic, supra, at 7a-10a; Sarno, supra, at 83-99, 6. In particular, the Court of Appeals in this case expressly rejected the prejudice standard articulated by Judge Leventhal in his plurality opinion

in United States v. Decoster, 199 U.S. App. D.C. 359, 371, 374-375, 624 F.2d 196, 208, 211-212 (en banc), cert. denied, 444 U.S. 944 (1979), and adopted by the State of Florida in Knight v. State, 394 So.2d, at 1001, a standard that requires a showing that specified deficient conduct of counsel was likely to have affected the outcome of the proceeding. 693 F.2d, at 1261-1262. For these reasons, we granted certiorari to consider the standards by which to judge a contention that the Constitution requires that a criminal judgment be overturned because of the actual ineffective assistance of counsel. 462 U.S. 1105 (1983). We agree with the Court of Appeals that the exhaustion rule requiring dismissal of mixed petitions, though to be strictly enforced, is not jurisdictional. See Rose v. Lundy, 455 U.S., at 515 -520. We therefore address the merits of the constitutional issue.

II

In a long line of cases that includes Powell v. Alabama, 287 U.S. 45 (1932), Johnson v. Zerbst, 304 U.S. 458 (1938), and Gideon v. Wainwright, 372 U.S. 335 (1963), this Court has recognized that the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial. The Constitution guarantees a fair trial through [466 U.S. 668, 685] the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the "ample opportunity to meet the case of the prosecution" to which they are entitled. Adams v. United States ex rel. McCann, 317 U.S. 269, 275 , 276 (1942); see Powell v. Alabama, supra, at 68-69.

Because of the vital importance of counsel's assistance, this Court has held that, with certain exceptions, a person accused of a federal or state crime has the right to have counsel appointed if retained counsel cannot be obtained. See Argersinger v. Hamlin, 407 U.S. 25 (1972); Gideon v. Wainwright, supra; Johnson v. Zerbst, supra. That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of

the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. [466 U.S. 668, 686] For that reason, the Court has recognized that "the right to counsel is the right to the effective assistance of counsel." McMann v. Richardson, 397 U.S. 759, 771 , n. 14 (1970). Government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense. See, e. g., Geders v. United States, 425 U.S. 80 (1976) (bar on attorney-client consultation during overnight recess); Herring v. New York, 422 U.S. 853 (1975) (bar on summation at bench trial); Brooks v. Tennessee, 406 U.S. 605, 612 -613 (1972) (requirement that Appellant be first defense witness); Ferguson v. Georgia, 365 U.S. 570, 593 -596 (1961) (bar on direct examination of Appellant). Counsel, however, can also deprive a Appellant of the right to effective assistance, simply by failing to render "adequate legal assistance," Cuyler v. Sullivan, 446 U.S., at 344 . Id. at 345-350 (actual conflict of interest adversely affecting lawyer's performance renders assistance ineffective). The Court has not elaborated on the meaning of the constitutional requirement of effective assistance in the latter class of cases - that is, those presenting claims of "actual ineffectiveness." In giving meaning to the requirement, however, we must take its purpose - to ensure a fair trial - as the guide. The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. The same principle applies to a capital sentencing proceeding such as that provided by Florida law. We need not consider the role of counsel in an ordinary sentencing, which may involve informal proceedings and standardless discretion in the sentencer, and hence may require a different approach to the definition of constitutionally effective assistance. A capital sentencing proceeding like the one involved in this case, however, is sufficiently like a trial in its adversarial format and in the existence of standards for decision, see Barclay [466 U.S. 668, 687] v. Florida, 463 U.S. 939, 952 -954 (1983); Bullington v. Missouri, 451 U.S. 430 (1981), that counsel's role in the proceeding is comparable to counsel's role at trial - to ensure that the adversarial testing process works to produce a just result under the standards governing decision. For purposes of describing counsel's duties, therefore, Florida's capital sentencing proceeding need not be distinguished from an ordinary trial.

III

A convicted Appellant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the Appellant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the Appellant by

the Sixth Amendment. Second, the Appellant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the Appellant of a fair trial, a trial whose result is reliable. Unless a Appellant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

A

As all the Federal Courts of Appeals have now held, the proper standard for attorney performance is that of reasonably effective assistance. See Trapnell v. United States, 725 F.2d, at 151-152. The Court indirectly recognized as much when it stated in McMann v. Richardson, supra, at 770, 771, that a guilty plea cannot be attacked as based on inadequate legal advice unless counsel was not "a reasonably competent attorney" and the advice was not "within the range of competence demanded of attorneys in criminal cases." See also Cuyler v. Sullivan, supra, at 344. When a convicted Appellant [466 U.S. 668, 688] complains of the ineffectiveness of counsel's assistance, the Appellant must show that counsel's representation fell below an objective standard of reasonableness. More specific guidelines are not appropriate. The Sixth Amendment refers simply to "counsel," not specifying particular requirements of effective assistance. It relies instead on the legal profession's maintenance of standards sufficient to justify the law's presumption that counsel will fulfill the role in the adversary process that the Amendment envisions. See Michel v. Louisiana, 350 U.S. 91, 100 -101 (1955). The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. Representation of a criminal Appellant entails certain basic duties. Counsel's function is to assist the Appellant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. See Cuyler v. Sullivan, supra, at 346. From counsel's function as assistant to the Appellant derive the overarching duty to advocate the Appellant's cause and the more particular duties to consult with the Appellant on important decisions and to keep the Appellant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. See Powell v. Alabama, 287 U.S., at 68 -69. These basic duties neither exhaustively define the obligations of counsel nor form a checklist for judicial evaluation of attorney performance. In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. Prevailing norms of practice as reflected in American Bar Association standards and the like, e. g., ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed. 1980) ("The Defense Function"), are guides to determining what is reasonable, but they are only guides. No particular set of detailed rules for counsel's conduct can satisfactorily take [466 U.S. 668, 689] account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how

best to represent a criminal Appellant. Any such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions. See United States v. Decoster, 199 U.S. App. D.C., at 371, 624 F.2d, at 208. Indeed, the existence of detailed guidelines for representation could distract counsel from the overriding mission of vigorous advocacy of the Appellant's cause. Moreover, the purpose of the effective assistance guarantee of the Sixth Amendment is not to improve the quality of legal representation, although that is a goal of considerable importance to the legal system. The purpose is simply to ensure that criminal defendants receive a fair trial. Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a Appellant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Cf. Engle v. Isaac, 456 U.S. 107, 133 -134 (1982). A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the Appellant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." See Michel v. Louisiana, supra, at 101. There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way. See Goodpaster, [466 U.S. 668, 690] The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases, 58 N. Y. U. L. Rev. 299, 343 (1983). The availability of intrusive post-trial inquiry into attorney performance or of detailed guidelines for its evaluation would encourage the proliferation of ineffectiveness challenges. Criminal trials resolved unfavorably to the Appellant would increasingly come to be followed by a second trial, this one of counsel's unsuccessful defense. Counsel's performance and even willingness to serve could be adversely affected. Intensive scrutiny of counsel and rigid requirements for acceptable assistance could dampen the ardor and impair the independence of defense counsel, discourage the acceptance of assigned cases, and undermine the trust between attorney and client. Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted Appellant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms,

is to make the adversarial testing process work in the particular case. At the same time, the court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. These standards require no special amplification in order to define counsel's duty to investigate, the duty at issue in this case. As the Court of Appeals concluded, strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic [466 U.S. 668, 691] choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. The reasonableness of counsel's actions may be determined or substantially influenced by the Appellant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the Appellant and on information supplied by the Appellant. In particular, what investigation decisions are reasonable depends critically on such information. For example, when the facts that support a certain potential line of defense are generally known to counsel because of what the Appellant has said, the need for further investigation may be considerably diminished or eliminated altogether. And when a Appellant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable. In short, inquiry into counsel's conversations with the Appellant may be critical to a proper assessment of counsel's investigation decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions. See United States v. Decoster, supra, at 372-373, 624 F.2d, at 209-210.

B

An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment. Cf. United States v. Morrison, 449 U.S. 361, 364 -365 (1981). The purpose of the Sixth Amendment guarantee of counsel is to ensure [466 U.S. 668, 692] that a Appellant has the assistance necessary to justify reliance on the outcome of the proceeding. Accordingly, any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution. In certain Sixth Amendment contexts, prejudice is presumed. Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. So are various kinds of state interference with counsel's assistance. See United States v. Cronic, ante, at 659, and

n. 25. Prejudice in these circumstances is so likely that case-by-case inquiry into prejudice is not worth the cost. Ante, at 658. Moreover, such circumstances involve impairments of the Sixth Amendment right that are easy to identify and, for that reason and because the prosecution is directly responsible, easy for the government to prevent. One type of actual ineffectiveness claim warrants a similar, though more limited, presumption of prejudice. In Cuyler v. Sullivan, 446 U.S., at 345 -350, the Court held that prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel's duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, see, e. g., Fed. Rule Crim. Proc. 44(c), it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest. Even so, the rule is not quite the per se rule of prejudice that exists for the Sixth Amendment claims mentioned above. Prejudice is presumed only if the Appellant demonstrates that counsel "actively represented conflicting interests" and that "an actual conflict of interest adversely affected his lawyer's performance." Cuyler v. Sullivan, supra, at 350, 348 (footnote omitted). [466 U.S. 668, 693] Conflict of interest claims aside, actual ineffectiveness claims alleging a deficiency in attorney performance are subject to a general requirement that the Appellant affirmatively prove prejudice. The government is not responsible for, and hence not able to prevent, attorney errors that will result in reversal of a conviction or sentence. Attorney errors come in an infinite variety and are as likely to be utterly harmless in a particular case as they are to be prejudicial. They cannot be classified according to likelihood of causing prejudice. Nor can they be defined with sufficient precision to inform defense attorneys correctly just what conduct to avoid. Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another. Even if a Appellant shows that particular errors of counsel were unreasonable, therefore, the Appellant must show that they actually had an adverse effect on the defense. It is not enough for the Appellant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, cf. United States v. Valenzuela-Bernal, 458 U.S. 858, 866 -867 (1982), and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding. Respondent suggests requiring a showing that the errors "impaired the presentation of the defense." Brief for Respondent 58. That standard, however, provides no workable principle. Since any error, if it is indeed an error, "impairs" the presentation of the defense, the proposed standard is inadequate because it provides no way of deciding what impairments are sufficiently serious to warrant setting aside the outcome of the proceeding.

On the other hand, we believe that a Appellant need not show that counsel's deficient conduct more likely than not altered the outcome in the case. This outcome-determinative standard has several strengths. It defines the relevant inquiry in a way familiar to courts, though the inquiry, as is inevitable, is anything but precise. The standard also reflects the profound importance of finality in criminal proceedings. [466 U.S. 668, 694] Moreover, it comports with the widely used standard for assessing motions for new trial based on newly discovered evidence. See Brief for United States as Amicus Curiae 19-20, and nn. 10, 11. Nevertheless, the standard is not quite appropriate. Even when the specified attorney error results in the omission of certain evidence, the newly discovered evidence standard is not an apt source from which to draw a prejudice standard for ineffectiveness claims. The high standard for newly discovered evidence claims presupposes that all the essential elements of a presumptively accurate and fair proceeding were present in the proceeding whose result is challenged. Cf. United States v. Johnson, 327 U.S. 106, 112 (1946). An ineffective assistance claim asserts the absence of one of the crucial assurances that the result of the proceeding is reliable, so finality concerns are somewhat weaker and the appropriate standard of prejudice should be somewhat lower. The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome. Accordingly, the appropriate test for prejudice finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution, United States v. Agurs, 427 U.S., at 104 , 112-113, and in the test for materiality of testimony made unavailable to the defense by Government deportation of a witness, United States v. Valenzuela-Bernal, supra, at 872-874. The Appellant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. In making the determination whether the specified errors resulted in the required prejudice, a court should presume, absent challenge to the judgment on grounds of evidentiary insufficiency, that the judge or jury acted according to law. [466 U.S. 668, 695] An assessment of the likelihood of a result more favorable to the Appellant must exclude the possibility of arbitrariness, whimsy, caprice, "nullification," and the like. A Appellant has no entitlement to the luck of a lawless decisionmaker, even if a lawless decision cannot be reviewed. The assessment of prejudice should proceed on the assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision. It should not depend on the idiosyncrasies of the particular decisionmaker, such as unusual propensities toward harshness or leniency. Although these factors may actually have entered into counsel's selection of strategies and, to that limited extent, may thus affect the performance inquiry, they are irrelevant to the prejudice inquiry. Thus, evidence

about the actual process of decision, if not part of the record of the proceeding under review, and evidence about, for example, a particular judge's sentencing practices, should not be considered in the prejudice determination. The governing legal standard plays a critical role in defining the question to be asked in assessing the prejudice from counsel's errors. When a Appellant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt. When a Appellant challenges a death sentence such as the one at issue in this case, the question is whether there is a reasonable probability that, absent the errors, the sentencer - including an appellate court, to the extent it independently reweighs the evidence - would have concluded that the balance of aggravating and mitigating circumstances did not warrant death. In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. Some of the factual findings will have been unaffected by the errors, and factual findings that were affected will have been affected in different ways. Some errors will have had a pervasive effect on the inferences to [466 U.S. 668, 696] be drawn from the evidence, altering the entire evidentiary picture, and some will have had an isolated, trivial effect. Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support. Taking the unaffected findings as a given, and taking due account of the effect of the errors on the remaining findings, a court making the prejudice inquiry must ask if the Appellant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors.

IV

A number of practical considerations are important for the application of the standards we have outlined. Most important, in adjudicating a claim of actual ineffectiveness of counsel, a court should keep in mind that the principles we have stated do not establish mechanical rules. Although those principles should guide the process of decision, the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results. To the extent that this has already been the guiding inquiry in the lower courts, the standards articulated today do not require reconsideration of ineffectiveness claims rejected under different standards. Cf. Trapnell v. United States, 725 F.2d, at 153 (in several years of applying "farce and mockery" standard along with "reasonable competence" standard, court "never found that the result of a case hinged on the choice of a particular standard"). In particular, the minor differences in the lower courts' precise formulations of the performance standard are insignificant: the different [466 U.S. 668,

> 697] formulations are mere variations of the overarching reasonableness standard. With regard to the prejudice inquiry, only the strict outcome-determinative test, among the standards articulated in the lower courts, imposes a heavier burden on defendants than the tests laid down today. The difference, however, should alter the merit of an ineffectiveness claim only in the rarest case. Although we have discussed the performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the Appellant makes an insufficient showing on one. In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the Appellant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result.

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

Under the standards set forth above in Strickland, and by a demonstration of the record and the facts set out herein and in support of the claims in this case, it is clear that Dennis Jefferson has presented a textbook illustration of the claim of ineffective assistance of counsel and suffered a violation of his constitutional rights to effective assistance of counsel, in violation of the 6th Amendment to the United States Constitution. This Court should reverse and remand for a new trial on this claim or should reverse and render the conviction in this matter. Dennis Jefferson, under the law, should not have been convicted of burglary of a building.

Issue No. Four

Whether evidence was insufficient to prove Appellant committed crime charged or any crime.

As the state readily admitted at the end of the presentation of the state's case in chief:

> We would agree, based upon the evidence, since the storage shed was not entered, that there is not a dwelling of the premises itself. However, that still leaves the lesser included felony of burglary of another building, because the shed was entered as well, and you had stuff stolen out of the garage. There was an attempt to steal stuff out of the shed, and we believe there is enough top go on the jury on the burglary of another building charge. (Tr. 108)

This being clear, the evidence was insufficient to prove Appellant committed any crime. Jefferson did not burglarize any building nor take any property. The state did not prove that Dennis Jefferson knowingly and intentionally committed any offense charged by the indictment nor later evaded to as an alternative. The state did not indict Jefferson for burglary. Jefferson should not have been found guilty of this charge since there was insufficient evidence to prove that he had committed burglary, house burglary, or any other charge. The Supreme Court has held that "(W)hen reviewing the sufficiency of the evidence supporting a conviction, we look at "whether the evidence shows `beyond a reasonable doubt that accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction.'" Bush v. State, 895 So.2d 836, 843 (¶ 16) (Miss. 2005) (quoting Carr v. State, 208 So. 2d 886, 889 (Miss. 1968)). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id. (quoting Jackson v. Virginia, 443 U.S. 307, 315 (1979)).

Jefferson was convicted in accordance with Mississippi Code Annotated Section 97-17-33, where the state suggested, and confessed to the trial court, that Appellant could be guilty of "burglary of another building" (Tr. 108). Jefferson was indicted under Mississippi Code

Annotated Section 97-17-23, house burglary. (C.P. 3) These charges are creatures of totally different statutes and while the state asserted that one is the lesser included of the other, the law clearly speaks differently. Smith v. State, 725 So. 2d 922, 929 (¶ 16) (Miss.Ct.App. 1998).

The evidence introduced at trial demonstrates that Appellant did not commit the crime of house burglary, burglary of a building, or any other crime. This Court should find that, even after viewing the evidence in favor of the state, it fails to suffice to demonstrate Appellant's guilt of the crime charged in the indictment or to any other crime.

Issue No. Five

Whether Appellant was denied fair trial because of he cumulative effect of the claims stated herein.

Appellant asserts that even in the event this Honorable Court hold that each of the aforesaid claims raised, standing alone, does not constitute cause to grant relief, the cumulative effect of each acted to deprive Appellant Jefferson of his constitutional right to a fair trial, as guaranteed to him under the Sixth and Fourteenth Amendments to the United States Constitution, and Article 3, Sections 14 and 26 of our Mississippi Constitution. Rainer v. State, 473 So.2d 172, 174 (Miss. 1985); Williams v. State, 445 So.2d 798, 814 (Miss. 1984).

In cases similar as the one presented here, the Supreme Court has not hesitated in reversing other defendants convictions and ordering a new trial, for "(a) fair trial is, after all, the reasons we have our system of justice; it is a paramount distinction between free and totalitarian societies." Johnson v. State, 476 So.2d 1195 (Miss. 1985), cited with approval in Fisher v. State, 481 So.2d 283 (Miss. 1985).

> *"It is one of the crowning glories of our law that, no matter how guilty one may be, no matter how atrocious his crime, nor how certain his doom when brought to trial anywhere, he shall, nevertheless, have the same fair and impartial trial accorded to the most innocent Appellant. Those safeguards*

crystallized into the constitution and laws of the land as the result of centuries of experience, must be, by the courts, sacredly upheld as well as in the case of the guiltiest as of the most innocent Appellant answering at the bar of his country. And it ought to be a reflection always potent in the public mind, that where the crime is atrocious, condemnations is sure, when all these safeguards are accorded the Appellant, and therefore the more atrocious the crime, the less need is there for any infringement of these safeguards." Tennison v. State, *79 Miss. 708, 713, 31 So. 421, 422 (1902), cited and quoted with approval in* Johnson v. State, supra.

The importance to which the Honorable Mississippi Supreme Court has jealously guarded and accused right to a fair trial and fair judicial process is further reflected in Cruthirds v. State, 2 So.2d 154 (Miss. 1941)

"The storm of opposition, brute force and hate which is sweeping across a large part of the universe has levered to the ground the temple of justice in many countries, and even in our own it has been shaken and broken in places, yet we may fervently hope that when the storm shall have spent its fury there will remain undisputed, as one of the foundational pillars of that temple, the right of all men, whether rich or poor, strong or weak, guilty or innocent, to a fair trial, orderly and impartial trial in the courts of the land. Id. at 146.,

The case sub judice falls within the perimeters of that described in Scarbrough v. State, 37 So.2d 748 (Miss. 1948):

"This is not one of those case for the application of the rule that a conviction will be affirmed unless it appears that another jury could reasonably reach a different verdict upon a proper trial then that returned on the former one, but rather it is a case where the constitutional right of an accused to a fair and impartial trial has been violated. When that is done, the Appellant is entitled to another trial regardless to the fact that the evidence on the first trial may have shown him to be guilty beyond every reasonable doubt. The law guarantees this to one accused of crime, and until he has had a fair an impartial trial within the meaning of the Constitution and the laws of the State, he is not to be deprived of his liberty by a sentence in the state penitentiary." Id. *At 750.*

Since the right to a fair trial is a fundamental and essential right, under the form of our government, Johnson v. State, supra, there shall be no procedural bar to these assignments of error, which collectively denied Appellant Jefferson his constitutional fundamental right to a fair trial, being raised for the first time in an appellate setting. Gallion, 469 So.2d 1247 (Miss. 1985).

Appellant Jefferson did not receive a fair trial in this case when the trial Court and defense counsel allowed the state to introduce and secure jury instructions which effectively

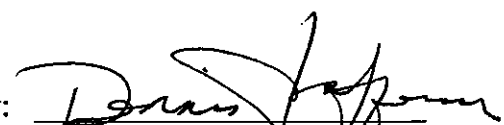
allowed the jury to bring back a verdict for burglary of a building when the law clearly dictates that this is not a lesser included offense for the charge of house burglary. Where there was no evidence of house burglary, as the state had charged in the indictment and convinced the grand jury this was the appropriate charge, the Court should have granted a directed verdict on the charge or instructed.

This Court should reverse and render this case on the basis that Appellant was deprived of a fair trial and that such unfairness deprived Appellant of his fundamental right to due process of law.

CONCLUSION

For the reasons and authority cited herein, Appellant Jefferson submits that his conviction and sentence should be reversed rendered. In the alternative, Appellant Jefferson's Conviction and sentence should be reversed to the trial court with instructions that a new trial be granted consistent with the laws of the State of Mississippi. .

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

This is to certify that I, Dennis Jefferson, have this date served a true and correct copy of the above and foregoing Supplemental Brief for Appellant, by United States Postal Service, first class postage prepaid, upon:

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Respectfully submitted,

This, the 20th day of June, 2007.

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