

**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2006-KA-02102-COA**

JIMI LEVAR WATTS

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF
GEORGE COUNTY, MISSISSIPPI**

REPLY BRIEF OF THE APPELLANT

ORAL ARGUMENT REQUESTED

Attorney for Appellant:

Ray T. Price (MSB [REDACTED])
Ray T. Price, P. A.
P.O. Box 1546
Hattiesburg, MS 39403-1546
(601) 545-3336

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I. THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION FOR DIRECTED VERDICT OF ACQUITTAL.

The State's argument on the first issue, sufficiency of the evidence of constructive possession, simply attempts to compare apples and oranges. The State chose not to even attempt to rebut our argument on the most relevant authority. Instead, the main case cited in support of the conviction contains additional factors supporting constructive possession that are not present in Jimi's case. The case of Stewart v. State, 921 So.2d 1287 (Miss. App. 2006) is cited at page 13 of the State's brief as standing for the proposition that "proximity plus "an admission" by Stewart was sufficient to for establishing 'constructive possession.'" The facts in Stewart placed Stewart in the vehicle with the drugs, not the case here where Jimi was not inside the car. The facts there also included a real admission to one officer that the drugs were his and to another that he knew of the presence of the drugs but claimed they were owned by someone else. Stewart, 921 So.2d , para 12. These factual distinctions make this case wholly different from Jimi's case.

In this case, Jimi not only was not in the car but made no “admission.” Jimi’s statement that he had just picked up the vehicle from a mechanic’s shop meets no known definition of “admission.” Under our Rules of Evidence, an “admission” is actually termed a “statement against interest.” According to M.R.E. 804(b)(3) such a statement is one that “was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true.” Jimi submits that a statement that he just got his car out of the shop woefully fails to meet this standard. Civil or criminal liability for having a car in the shop? This strained argument is almost ridiculous.

The State next cites Tran v. State, 819 So.2d 555 (Miss. 2002), a money-laundering case, which is also factually and legally dissimilar and not on point. Here, there is no showing in the facts that the statement regarding the vehicle having been in the shop are false. The remainder of the State’s argument on this issue is equally off-point and the Court should find that, due to the State’s failure to address the points raised in Jimi’s initial brief and utter failure to offer other sufficient support of the verdict, the judgment should be reversed.

II. THE TRIAL COURT ERRED IN ALLOWING HEARSAY TESTIMONY REGARDING AN ALLEGED CONFIDENTIAL INFORMANT’S ALLEGATION THAT JIMI WAS INVOLVED IN DRUG ACTIVITY IN “THE GROVE”.

The State in its brief makes this incorrect statement, “[w]hile the information received by the informant was mentioned, there was no specific information about anything that Watts did that related to the constructive possession charge in the instant cause.” pp. 16-17 The State here is mistaken, as earlier in the brief it admitted that, in the record, testimony was elicited by the

State “about illegal narcotics activity by Watts.” State’s brief, p. 2. The trial court granted Jimi’s motion *in limine* on this issue, instructing the State not to elicit testimony specific to Watts due to the very issue of trial counsel’s insistence that this type of testimony would violate the confrontation clause. The State, however, chose to violate the trial court’s order and elicit the testimony.

We agree with the State that the precedent they cite allows a certain amount of hearsay testimony to be used to establish certain facts which explain police presence in a given location as a foundational matter. However, the specific hearsay of the informant here was not limited to such facts, and as demonstrated in our previous brief clearly violated Jimi’s confrontation rights, which the trial court had already ruled should not occur.

This case is totally unlike those cited wherein the confidential informant is not a witness to the crime charged. The manner in which the State tried this case proves our point. Because this was a constructive possession case, the State needed all the circumstantial evidence it could get to try to make enough connection between Jimi and the drugs to support a conviction. We believe that the admission of this testimony, from an unknown confidential informant who claimed he had witnessed Jimi involved in drug activity, was the strongest evidence offered at trial against Jimi to prove a connection between him and the drugs. If the jury did consider it, despite the instruction not to, which of course we cannot either prove or disprove, the conviction becomes understandable. Without this evidence, there is almost no way to connect Jimi to the drugs in the vehicle. If one considers this piece of evidence along with the other testimony, however, the verdict becomes understandable. This evidence makes the informant, by virtue of his being able to make a connection between Jimi and the drugs, a witness to the crime charged. Thus, the cases cited by the State, beginning with Jackson v. State, 935 So.2d 1108 (Miss. App.

2006) simply do not apply here. Jimi's Federal and State rights to confrontation were violated here.

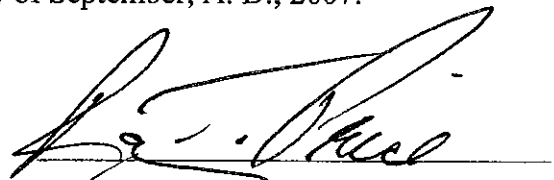
The State attempts to argue that this issue was waived because of the failure to object contemporaneously at trial. Trial counsel, having won the motion *in limine*, was entitled to expect the State to comply with the judge's ruling. When it did not, he was forced to make a strategic decision on whether to object before the jury and whether to submit the limiting instruction he did. He also could have asked for a mistrial. He almost certainly chose as he did as a matter of strategy, considering that if he moved for and obtained a mistrial his client would be back to square one, remaining in jeopardy and facing certain retrial.

This being a matter of a constitutional violation, occurring after the trial court granted Jimi's motion *in limine*, no issues of waiver should in any sense of justice should be considered by the Court.

CONCLUSION

For all of the above reasons, Jimi Watts prays that this Court reverse and render the decision of the Circuit Court and order that the Defendant be immediately discharged from custody.

Respectfully submitted on this the 10th day of September, A. D., 2007.

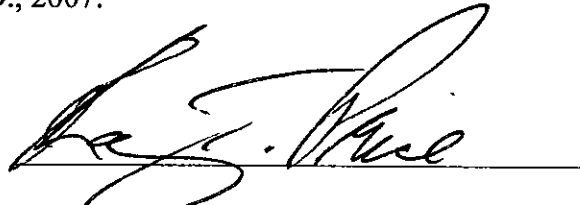
A handwritten signature in black ink, appearing to read 'Ray T. Price', written over a horizontal line.

RAY T. PRICE
Of Counsel for Appellant

CERTIFICATE OF SERVICE AS TO FILING

I, Ray T. Price, being the attorney of record for the Appellant in this case, certify that I have this date mailed, postage prepaid, the original and three copies of the foregoing Reply Brief of the Appellant to the Clerk of the Supreme Court, Supreme Court of Mississippi, P. O. Box 117, Jackson, MS 39205.

This the 10th day of September, A. D., 2007.



RAY T. PRICE

CERTIFICATE

I, Ray T. Price, of counsel for Appellant, certify that I have this date mailed, postage prepaid, a true copy of the foregoing Reply Brief of Appellant to the following:

Honorable Robert Krebs
George County Circuit Court Judge
P.O. Box 998
Pascagoula, MS 39568

W. Glenn Watts, Esq.
Office of the Attorney General
P. O. Box 220
Jackson, MS 39205-0220

This the 10th day of September, A. D., 2007.



RAY T. PRICE

RAY T. PRICE
RAY T. PRICE, P.A.
P. O. Box 1546
Hattiesburg, Ms 39403-1546
(601) 545-3336
MSB No. 9016