SUPREME COURT OF MISSISSIPPI

COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-CP-01329

ALVIN D. THOMPSON EL APPELLANT

VERSUS

STATE OF MISSISSIPPI APPELLEE

APPEAL FROM THE CIRCUIT COURT OF

LAUDERDALE COUNTY, MISSISSIPPI

BRIEF OF THE APPELLANT

NO ORAL ARGUMENT REQUESTED

PRO-SE, APPELLANT

ALVIN D. THOMPSON EL

MDOC# 123927

1420 INDUSTRIAL PK RD

WIGGINS, MS 39577

CERTIFICATE OF INTERESTED PERSONS

I, ALVIN D. THOMPSON EL, PRO-SE APPELLANT CERTIFIES THAT THE FOLLOWING LISTED PERSONS HAVE AN INTEREST IN THE OUTCOME OF THIS CASE. THESE REPRESENTATION ARE MADE IN ORDER THAT THE JUSTICES OF THE SUPREME COURT AND/OR THE JUDGES OF THE COURT OF APPEALS MAY EVALUATE POSSIBLE DISQUALIFICATION OF RECUSAL.

- HONORABLE LESTER WILLIAMSON, LAUDERDALE COUNTY CIRCUIT COURT JUDGE
- VELDORA YOUNG, ASSISTANT DISTRICT ATTORNEY LAUDERDALE COUNTY
- HONORABLE DONNA JILL JOHNSON, LAUDERDALE COUNTY CIRCUIT CLERK
- HONORABLE BETTY W. SEPTON, CLERK MS SUPREME COURT / COURT OF APPEALS
- Jim Hood Esq. ATTORNEY GENERAL, Mississippi
- FRANCIS SMITH STEPHENSON, LAUDERDALE Co. PUBLIC DEFENDER. APPELLANT'S TRIAL COUNSEL

THIS THE 22 DAY OF FEB, A.D., 2008

A.D. Thompson EL

ALVIN D. THOMPSON EL

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IN THE SUPREME COURT OF MISSISSIPPI

ALVIN D. THOMPSON EL

APPELLANT

VS. CASE NO. 2007-CP-01329

STATE OF MISSISSIPPI

APPELLEE

APPELLANT'S BRIEF

COMES NOW, ALVIN D THOMPSON EL, APPELLANT, PRO-SE, AND FILES IN THIS HONORABLE COURT THIS APPELLANT BRIEF AND WILL PRESENT UNTO THIS HONORABLE COURT THE FOLLOWING FACT AND MATTER TO WIT:

ARGUMENT OF GROUNDS

GROUND ONE

APPELLANT BELIEVES THAT BY HIS COUNSEL ONLY HAVING INTERVIEWED HIM THE EVE OF TRIAL THAT HE DID NOT RECIEVE EFFECTIVE ASSISTANCE OF COUNSEL. THEREFORE HAVING HIS SIXTH AMENDMENT RIGHTS VIOLATED AS OUTLINED BY THE UNITED STATE CONSTITUTION.

APPELLANT WOULD ARGUE THAT THOUGH HE WAS APPOINTED COUNSEL NOVEMBER 7, 2005 BY THE COURT THAT THE COURT FAILS TO MENTION THAT (HIS) THE APPELLANTS COUNSEL CHANGED ON OR BETWEEN DECEMBER 2005 OR JANUARY 2006. THIS BEING DUE TO THE ORIGINAL COURT APPOINTED COUNSEL NO LONGER OFFERING HIS SERVICES TO LAUDERDALE COUNTY AS A PUBLIC DEFENDER. APPELLANT ARGUES THAT HE CONTACTED HIS COURT APPOINTED COUNSEL BY MAIL AND BY LEAVING PHONE MESSAGES ON HER (MRS. FRANCIS SMITH STEPHENSON) ANSWERING MACHINE, BUT TO NO AVAIL. ONLY AFTER THE APPELLANT WROTE THE MISS. BAR ASSOCIATION ABOUT ATTORNEY FRANCIS STEPHENSON'S FAILURE TO PROVIDE ASSISTANCE AND RECIEVING THEIR RESPONSE DID SHE PROCEED TO OFFER COUNSEL WHICH WAS ON THE DATE OF THE AUGUST 8TH, 2006 ON OR ABOUT 3 OR 4 O'CLOCK IN THE AFTERNOON ONLY HOURS BEFORE THE TRIAL WHICH WAS TO BE HELD ON THE MORNING AUGUST 9TH 2006. MRS. STEPHENSON, THEN UPON THIS INITIAL VISIT OFFERED APPELLANT A PLEA AGREEMENT FOR 10 YEARS OF WHICH SHE MADE KNOWN TO HIM THAT SHE HAD

ONLY A FEW HOURS BEFORE DISCUSSED WITH DISTRICT ATTORNEY'S ASSISTANT VELDORA YOUNG. APPELLANT INFORMED MRS. STEPHENSON THAT HE WAS NOT GUILTY OF ALLEGED CHARGES AND INFORMED HER THAT HE HAD WRITTEN HER SEVERAL TIMES STATING THAT HE WAS NOT GUILTY, AND THAT HE WAS WILLING TO STAND TRIAL, BECAUSE HE MAINTAINS THAT HE IS NOT GUILTY OF SAID CHARGES. APPELLANTS COURT APPOINTED COUNSEL FAILED TO ARGUE OR AT LEAST PLEAD HIS ACTUAL INNOCENTS OF THE ALLEGED CHARGES.

APPELLANT MAINTAINS THAT HAD HE BEEN PROPERLY REPRESENTED THE OUTCOME OF HIS TRIAL WOULD HAVE BEEN DIFFERENT. IT IS THE APPELLANTS CLAIM THAT BECAUSE OF THE CHANGE IN HIS COUNSEL TO MRS. FRANCIS STEPHENSON THAT HE DID NO RECIEVE EFFECTIVE ASSISTANCE OF COUNSEL, FUTHERMORE MRS STEPHENSON UPON HER APPOINT TO THE APPELLANT AS COUNSEL FAILED TO DISLUSS ANY POSSIBLE DEFENSE FOR THE ALLEGED CONDUCT. APPELLANTS COURT APPOINTED COUNSEL THUS VIOLATED THE UNITED STATES CONSTITUTIONS SIXTH AMENDMENT WHICH GUARANTEES THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

STRICKLAND, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984)

GROUND TWO

APPELLANT CONTENDS THAT THE COURT HAS NOT MADE FULL EXAMINATION OF THE MOTION, TOGETHER WITH ALL THE FILES, RECORDS, TRANSCRIPTS AND CORRESPONDENCE.

THE COURT HAS ARGUED IN THEIR ORDER DENYING MOTION TO VACATE AGREED SENTENCING ORDER, "ASSIGNMENT OF ERROR DOES NOT CONCERN THE SENTENCING OF THE PETITIONER.", AND THAT THE MOTION DOES NOT ATTACK THE CONVICTION ITSELF. THUS BEING PROCEDURALLY BARRED AS NOT BEING WITHIN THE SCOPE OF THE MOTION. APPELLANT BEGS TO DIFFER AND RESPECTFULLY POINTS OUT THAT SAID MOTION WAS AMENDED WITH THE COURT ON 2007 MAY - 7 AM 9:59 AS STAMPED BY THE HONORABLE DONNA JILL JOHNSON, LAUDERDALE COUNTY CIRCUIT CLERK. IT SHOULD BE DULY NOTED THAT THE AMENDED GROUNDS SEEK TO ATTACK THE ACTUAL CONVICTION ITSELF. SO, THE APPELLANT ARGUES THAT THE ASSIGNMENT OF ERROR ARE WITHIN THE SCOPE OF THE MOTION AND THAT THE TRIAL COURT HAS FAILED TO EXAMINE THE MOTION IN ITS ENTIRETY. HAD THE COURT EXAMINE THE ENTIRE MOTION THEY WOULD HAVE

FOUND THAT THE APPELLANT WAS ACTUALLY INNOCENT OF THE ALLEGED CHARGES AND WOULD BE ENTITLE TO RELIEF BASE ON THE ERROR. APPELLANT ARGUES THAT AT THE LEAST THE COURT WOULD HAVE NOTED THAT THE MOTION ATTACKS THE CONVICTION ITSELF.

GROUND THREE

APPELLANT ARGUES THAT THE VERDICT WAS AGAINST MANFEST WEIGHT OF THE EVIDENCE IN THAT THE STATE FAILED TO PROVE THAT THE DEFENDENT EXCERCISED DOMINION OVER THE ALLEGED CONTRABAND. ON THE DAY IN QUESTION APPELLANT WAS IN THE EASTERN GARDEN HOUSING PROJECTS WHEN A WHITE MUSTANG GT TURNED INTO THE COMPLEX AS THE APPELLANT WAS SIGNALING FOR ONE OF THE RESIDENTS WHO LIVED THERE WITH HOOPING WHISTLE LIKE CALL. UPON NOTICING THE WHITE MUSTANG'S DRIVER (WHO WAS IDENTIFIED IN TRIAL AS AGENT DANIEL BOYD OF THE EAST MS NARCOTIC TASK FORCE) A WHITE MALE. THE APPELLANT BEGAN TO WALK UP THE SIDEWALK, THE DRIVER SLOWED DOWN AND YELLED OUT THE WINDOW TO THE APPELLANT," HEY, DO YOU GOT A

TWENTY OF HARD?" THE APPELLANT RESPONDED, "WHAT THE HELL IS TWENTY?, MAN YOU THE LAW." THE DRIVER RESPONDED, "MAN I AIN'T THE LAW." THE APPELLANT THEN CONTINUED TO WALK UP THE SIDEWALK, BUT THE DRIVER ONLY PULLED FORWARD AND TURNED IN TO A PARKING SPACE NEXT TO THE DUMPSTER IN THE NEXT SECTION OF APARTMENTS. THE DRIVER THEN HUNG HIS ARM FROM THE WINDOW WITH WHAT APPEARED TO BE SOME MONEY AND ASKED ONCE AGAIN ABOUT A TWENTY OF HARD. THE APPELLANT RESPONDED, "MAN, YOU THE POLICE." THE DRIVER (AGENT BOYD) REPLIED, "I PROMISE I AIN'T THE LAW. CAN YOU GET ME A TWENTY OF HARD?" THE APPELLANT EXCLAIMED TO THE OFFICER THAT HE WAS NOT A DEALER, BUT IF HE WOULD STAY PUT AND GIVE THE APPELLANT HIS MONEY THAT THE APPELLANT WOULD GO ELSEWHERE AND PURCHASE HIM, "SOMETHING." THE DRIVER IMMEDIATELY RESPONDED, "NO! DO YOU HAVE A 20 OF HARD ON YOU." NOTE THAT AT THE TRIAL ADMITTED TO PLANNING TO TAKE THE DRIVERS MONEY AND NOT RETURNING. AFTER THE DRIVER'S RESPONSE THE APPELLANT ANSWERED "BITCH YOU THE LAW" AND WALKED AWAY. THE

APPELLANT WALKED ABOUT 4 OR 5 YARDS THEN HEARD A CAR DOOR OPEN AND THE DRIVER YELLING STOP. THE APPELLANT TURNED BACK TO SEE THE DRIVER POINTING SOMETHING THAT APPEARED TO BE A GUN. THE APPELLANT IMMEDIATELY RAN IN FEAR FOR HIS LIFE. THE APPELLANT HAD ONLY RAN ABOUT 3 OR 4 YARDS BEFORE GLANCING BACK AND NOTICING THE DRIVER'S (AGENT BOYD'S) BADGE CLIPPED TO HIS BELT LOOP. THE APPELLANT THEN STOP RUNNING, SURRENDERED, AND EXCLAIMED TO THE DRIVER THAT HE WAS NOT GOING TO RESIST ARREST BECAUSE HE DIDN'T HAVE NOTHING TO RUN FOR. AGENT BOYD CONTINUED TO RUN TOWARD THE APPELLANT AND SLAM HIM TO THE GROUND. IN LESS THAN A MINUTE AGENT BOYD'S BACK UP ARRIVED AND FINISHED SECURING THE APPELLANT. THE BACK UP AGENT ASKED AGENT BOYD WHAT THE APPELLANT HAD AND HE RESPOND THAT THE APPELLANT HAD NARCOTICS ON HIS PERSON. THE APPELLANT OBJECT TO THE ALLEGATION. THE BACK UP AGENT SEARCHED THE APPELLANT'S PERSON (POCKETS, WALLET, AND HAT) BUT FOUND NOTHING. THE BACK UP AGENT INFORMED AGENT BOYD THAT THE APPELLANT HAD NOTHING. AGENT BOYD THE INSINUATED

THAT THE APPELLANT DROPPED AN OBJECT. AGENT BOYD FAILED TO IDENTIFY ALLEGED OBJECT AND HIS TESTIMONY TO THE COURT CONFLICTED WITH HIS ARREST REPORT. AGENT BOYD PROCEED TO LEAVE THE APPELLANT AND THE BACK UP AGENT. AGENT BOYD TESTIFIED IN COURT THAT HE RETURNED TO THE AREA THE APPELLANT WAS ORIGINALLY STANDING IN AND FOUND A PLASTIC CELLOPHANE CONTAINING ONE ROCK OF CRACK COCAINE WHICH THE LAB IDENTIFIED AS .08 GRAM IN WEIGHT. AGENT BOYD WOULD HAVE HAD TO GO AT LEAST 9 OR 10 YARDS BACK TO FIND THE ALLEGED CONTRABAND IN THE AREA THAT THE APPELLANT WAS ORIGINALLY STANDING. ALSO NOTE THAT THE STATE FAILED TO SUBPOENA THE BACK UP AGENT WHO WAS ACKNOWLEDGE DURING TRIAL, BUT NIETHER IS THEIR A REPORT FROM HIM OR AFFIDAVIT OF TESTIMONY. THE STATE DID NOT PROVE THAT APPELLANT WAS AWARE OF THE PRESENCE AND CHARACTER OF THE COCAINE. THERE WAS NO COMPETENT EVIDENCE SUBMITTED TO SHOW THAT THE APPELLANT POSSESSED OR WAS EVEN AWARE OF THE PRESENCE OF THE ALLEGED CONTRABAND. CAMPBELL VS. STATE OF MS 566 So.2d 475; 1990 MISS.

WHERE THE PREMISES UPON WHICH CONTRABAND IS FOUND IS NOT IN THE EXCLUSIVE POSSESSION OF THE ACCUSSED, THE ACCUSED IS ENTITLED TO ACQUITTAL, ABSENT SOME COMPETENT EVIDENCE CONNECTING HIM WITH THE CONTRABAND. THE TESTIMONY OF BOTH AGENT BOYD AND THE APPELLANT CLEARLY ESTABLISHED THAT THE CONTRABAND WAS NOT FOUND ON THE DEFENDENT'S PERSON. THE DEFENDENT NEITHER HAD CONTROL OF THE PREMISES NOR ACTUAL POSSESSION OF THE SUBSTANCE. GARRETT V. STATE, 549 So. 2d 1325 (Miss. 1989); POWELL V. STATE, 355 So. 2d 1378 (Miss 1978); PATE V. STATE, 557 So. 2d 1138 (Miss 1990); CURRY V. STATE, 249 So. 2d 414, 416 (Miss 1971)

IN THE INSTANT CASE THE STATE FAILED TO PROVE THAT THE DEFENDENT EXERCISED DOMINION OVER THE CRACK COCAINE. CONTRABAND WAS NOT FOUND ON DEFENDENT'S PERSON AND THE CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE STATE FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT THAT THE DEFENDENT HAD CONSTRUCTIVE POSSESSION. THIS IS IN LINE WITH SISK V. STATE, 290 So. 2d 608 (Miss 1974)

THE APPELLANT ALSO ARGUES THAT THE STATE FAILED TO EXHAUST ALL LAB METHODS. STATE COULD HAVE LIFTED FINGERPRINTS FROM PLASTIC CELLOPHANE IN WHICH ALLEGDED CONTRABAND WAS FOUND INSIDE OF. IN TRIAL AGENT BOYD TESTIFY THAT IT WAS POSSIBLE TO FINGERPRINT THE CELLOPHANE, BUT THAT THEY DON'T NORMALLY HAVE TO DO SO. THE STATE IN TURN CONFUSED THIS FACT TO THE JURY IN THAT THE STATE MADE IT APPEAR AS IF THE DEFENSE WAS TALKING ABOUT THE EVIDENCE BAG AND NOT THE PLASTIC CELLOPHANE INSIDE OF IT. THUS THE WEIGHT OF THE EVIDENCE DOES NOT SUPPORT THE VERDICT.

GROUND FOUR

APPELLANT ARGUES THAT THE STATE FAILED TO PROVE AN ESSENTIAL ELEMENT OF THE CRIME, i.e., INTENT TO DELIVER / SALE / DISTRIBUTE. THE WEIGHT OR DOSAGE UNIT OF THE ALLEGED CONTRABAND (.08 GRAMS OF COCAINE) DOES NOT EXCEED AN AMOUNT WHICH A PERSON COULD REASONABLY HOLD FOR PERSONAL CONSUMPTION, AND THEREFORE FAR BENEATH A QUANITY OR AMOUNT

ONE WOULD INTEND TO SELL / DISTRIBUTE. NOTE THAT "INTENT TO SELL" DOES NOT APPLY TO ALL ACTIONS CRIMINALIZED BY THE STATUE. THERE IS NO EVIDENCE THAT THE APPELLANT POSSESSED ALLEGED CONTRABAND OR HAVE INTENTION TO DO SO ON THE NIGHT IN QUESTION OR ANY NIGHT PREVIOUSLY OR SUBSEQUENTLY. MEEK V. STATE -- So. 2d -(Miss Ct App Feb 8, 2000); JACKSON V. STATE, 689 So. 2d 760 (Miss 1997) .08 GRAMS OF COCAINE DOES NOT EXCEED PERSONAL CONSUMPTION AMOUNT, THE STATE MUST PROVE THAT THE AMOUNT POSSESSED EXCEEDS PERSONAL CONSUMPTION. DURING TRIAL AGENT BOYD TESTIFIED THAT HE PROFILED APPELLANT AND THAT APPELLANT'S APPEARANCE WAS LIKE THOSE HE NORMALLY SAW CONDUCTING THIS TYPE OF ACTIVITY (DRUG DEALERS) AND BEHAVIOR. AGENT BOYD BASICALLY ADMITTED THAT HE ACTED ON MERE SUSPICION. THE MERE SUSPICION OF INTENT CANNOT SUPPORT A CONVICTION, AS THE STAT MUST PROVE INTENT BEYOND A REASONABLE DOUBT. THE APPELLANT ADMITTED DURING HIS TRIAL THAT HE CAME DOWN INSIDE EASTERN GARDEN PROJECTS TO PURCHASE A FIVE DOLLAR PACKAGE OF

MARIJUANA AND UPON HAVING CONTACT WITH WITH A MAN WHO IS NOW IDENTIFIED AS AGENT BOYD, HIS MOTIVE WAS THAT HE INTENDED TO TAKE AGENT BOYD'S MONEY AND NOT RETURN TO THE SCENE AT ALL. ESPARAZA V. STATE, 595 So. 2d 418 (Miss 1992). THUS THE QUANITY AND NATURE OF CONTRABAND MAY BE SUFFICIENT TO ESTABLISH INTENT TO DISTRIBUTE.

APPELLANT ALSO POINTS OUT IN ARGUMENT THAT POSSESSION OF COCAINE WITH INTENT INCLUDES TWO ESSENTIAL ELEMENTS: THE LESSER INCLUDED OFFENSE OF POSSESSION OR SIMPLE POSSESSION AS IT IS OFTEN CALLED; AND THE ENHANCEMENT OF W/ INTENT. APPELLANT CONTENDS THAT THE STATE HAS PROVED NIETHER IN THIS CASE. WHERE THE QUANITY OR NATURE IS SUCH THAT IT MERELY REFLECTS POSSESSION FOR PERSONAL USE AS AN INTENT TO DISTRIBUTE, THEN ONLY A SUSPICION OF INTENT IS RAISED. AGAIN MERE SUSPICION OF INTENT IS INSUFFICIENT TO SUPPORT A CONVICTION. HICKS V. STATE 580 So. 2d 1302, (1991 MISS)

FURTHERMORE THE COURT CAN PULL THE ARREST AND BOOKING REPORTS FOR THE NIGHT IN QUESTION AND WILL FIND THAT THE APPELLANT ONLY HAD IN HIS POSSESSION A FIVE DOLLAR BILL, HIS WALLET, A BLUE AND WHITE HAT, THE CLOTHES HE HAD ON AND A WASH CLOTH. THIS IS HARDLY THE AMOUNT OF MONEY THAT ONE WHO IS SELLING OR INTENDING TO SELL ANYTHING HAS IN HIS POSSESSION. ADDING TO THAT, THE AMOUNT .08 GRAMS OF COCAINE IS NOT SUFFICIENT TO CONSTITUTE INTENT TO SELL/DISTRIBUTE. JOWERS V. STATE, 593 So. 2d 46, 47, (1992 Miss); STRINGFIELD V. STATE, 588 So. 2d 438 (Miss 1991) THE APPELLANT CITES THAT IN MEEKS V. STATE WE ARE TO NOTE THAT A CONVICTION MAY BE SUSTAINED IF THERE IS EVIDENCE THAT A PERSON SOLD, MANUFACTURED, OR TRANSFERRED CONTRABAND OR IF THERE IS EVIDENCE THAT A PERSON "STILL POSSESSING" THE CONTRABAND HAD THE INTENTION TO SELL, MANUFACTUR, OR TRANSFER. THE APPELLENT ARGUES THAT .08 OR EIGHT ONE HUNDREDTH OF A GRAM DOES NOT EXCEED A PERSONAL CONSUMPTION AMOUNT AND THUS WARRANT GROUNDS FOR REVERSAL.

GROUND FIVE

TRIAL COURT ERRED IN ACCEPTING THE JURY'S VERDICT OF GUILTY, IN THAT STATE HAS FAILED TO PROVE EITHER OF THE TWO ESSENTIAL ELEMENTS OF POSSESSION W/ INTENT. THE STATE HAS NIETHER PROVED "INTENT" OR IT'S CORE ELEMENT OF "POSSESSION." THE STATE HAS NOT SHOW THAT THE APPELLANT ACTUALLY OR CONSTRUCTIVLY POSSESSED SAID CONTRABAND. THE STATE MADE IT'S CASE AGAINST THE DEFENDENT ON SIMPLY THE THEORY OF "CONSTRUCTIVE" POSSESSION. NO CONTRABAND WAS FOUND OR RETRIEVED FROM/IN DEFENDENTS POSSESSION. THE PROPERTY WHICH IS KNOWN FOR IT'S DRUG ACTIVITY IS A PUBLIC HOUSING PROJECT AND IS NOT THE RESIDENCE OF DEFENDENT. MISSISSIPPI LAW ON CONSTRUCTIVE POSSESSION COMPELS A FINDING THAT THE EVIDENCE IN THIS CASE WAS/IS INSUFFICIENT AS A MATTER OF LAW. "THE DOCTRINE OF CONSTRUCTIVE POSSESSION IS A LEGAL FICTION USED BY COURTS WHEN ACTUAL POSSESSION CANNOT BE PROVEN." Fultz v. STATE 573 So. 2d 689, PARA 5 (MISS 1990). IN ORDER TO ESTABLISH A CASE OF CONSTRUCTIVE POSSESSION, THE PROOF MUST BE SUCH THAT:

"THERE MUST BE SUFFICIENT FACT TO

WARRANT A FINDING THAT DEFENDANT WAS AWARE OF PRESENCE AND CHARACTER OF THE PARTICULAR SUBSTANCE AND WAS INTENTIONALLY AND CONSCIOUSLY IN POSSESSION OF IT. IT NEED NOT BE ACTUAL PHYSICAL POSSESSION. CONSTRUCTIVE POSSESSION MAY BE SHOWN BY ESTABLISHING THAT THE DRUG INVOLVED WAS SUBJECTED TO HIS DOMINION OR CONTROL. PROXIMITY IS USUALLY AN ESSENTIAL ELEMENT, BUT BY ITSELF IS NOT ADEQUATE IN THE ABSENCE OF OTHER INCRIMINATING EVIDENCE."

LURRY V. STATE, 249 So. 2d 414, 416 (MISS 1971) (EMPHASIS ADDED IN QUOTE FROM FULTZ, SUPRA, AT 573 So. 2d 689.)

IN FULTZ, THE DEFENDENT WAS STOPPED FOR A VIOLATION WHILE DRIVING A CAR HE DID NOT OWN, UPON A SEARCH, THE POLICE FOUND MARIJUANA IN THE TRUNK AND CHARGED FULTZ WITH FELONY POSSESSION. THIS COURT FOUND INSUFFICIENT EVIDENCE OF CONSTRUCTIVE POSSESSION TO CONVICT THE DEFENDENT, EVEN THOUGH IT FOUND THAT THE MARIJUANA WAS SUBJECT TO FULTZ'S DOMINION AND CONTROL AND HE HAD A SMALL AMOUNT OF MARIJUANA ON HIS PERSON. SINCE FULTZ DID NOT OWN

THE VEHICLE, THE COURT HELD THAT THE STATE, "MUST SHOW ADDITIONAL INCRIMINATING CIRCUMSTANCES TO JUSTIFY A FINDING OF CONSTRUCTIVE POSSESSION." FULTZ, 573 So. 2d PARA 7. THE COURT NOTED SEVERAL OTHER SIMILAR CASES WHERE IT HAD REVERSED CONVICTIONS BASED ON CONSTRUCTIVE POSSESSION WHERE DEFENDENT DID NOT OWN THE PREMISES, PROPERTY, OR VEHICLES AND OTHER INCRIMINATING CIRCUMSTANCES WERE NOT PRESENT. SEE: CURRY V. STATE, 249 So. 2d 414 (MISS 1971); BOCHES V. STATE, 506 So. 2d 254 (MISS 1987); POWELL V. STATE, 355 So. 2d 1378 (MISS 1978); HUDSON V. STATE, 362 So. 2d 645 (MISS 1978).

THE CASE AT BAR IS EVEN WEAKER THAN THOSE DISCUSSED ABOVE WHERE THIS COURT HAS REVERSED AND RENDERED. AT LEAST IN THOSE CASES, THE STATE COULD PUT DEFENDENT IN A VEHICLE OR PLACE DEFENDENT AS OWNER OR RESIDENT OF PROPERTY OR PREMISES. IN THIS CASE, THE STATES OFFICER HAS ADMITTED THAT HE DID NOT FIND OR RETRIEVE ANY CONTRABAND FROM/ ON THE DEFENDENTS PERSON. AND THAT THE PROPERTY WHICH IS OWNED BY MERIDIAN HOUSING AUTHORITY (MHA) IS A PUBLIC HOUSING PROJECTS AND

IS PATROLLED REGULARLY FOR IT'S ON GOING DRUG ACTIVITY. OFFICER ADMITTED THAT HE HAD NEVER SEEN OR MET DEFENDENT AT ALL OR UNDER ANY CIRCUMSTANCES BEFORE THE DAY IN QUESTION. THUS, THERE IS NO EVIDENCE OF DOMINION AND CONTROL AT THE TIME OF ALLEGED OFFENSE NOR DID HE EXERCISE KNOWLEDGE, PREMISE, OR POSSESSION OF SAID CONTRABAND (.08 GRAM COCAINE) AS IN MANY OF THOSE CASES DISCUSSED ABOVE. EVEN IF COURT COULD STRETCH DEFENDENTS RESIDENCE TO COULD HAVE BEEN EASTERN GARDENS HOUSING PROJECTS IT STILL WOULD NOT CONSTITUTE DOMINION AND CONTROL, AND NOR ARE THERE ANY ADDITIONAL INCRIMINATING CIRCUMSTANCES PRESENT TO PROVE CONSTRUCTIVE POSSESSION LET ALONE POSSESSION W/ INTENT. THIS ISSUE ALONE WARRANTS REVERSAL AND RENDER.

GROUND SIX

APPELLANT ARGUES THAT THE INDICTMENT IN THIS CAUSE IS DEFECTIVE SIMPLY BASED ON THE DETAILS OF THE STATUE (M.C.A 41-29-139)

SECTION (C)-1-A MAKES IT CLEAR THAT POSSESSION OF LESS THAN ONE TENTH OF A GRAM OR ONE DOSAGE UNIT CONSTITUTES MISDEMEANOR POSSESSION AND IF CHARGED AS A FELONY SHOWS THAT IT WOULD ONLY CONSTITUTE SIMPLE POSSESSION, THE STATE HAS ALLOWED A SEVERE INJUSTICE AGAINST APPELLANT IN INDICTING HIM FOR POSSESSION W/ INTENT (MCA 41-29-139 (a) 1). (IF YOU WOULD TAKE NOTE THAT THE AMOUNTS ARE STATED IN SPECIFIC AS DEALING WITH SIMPLE POSSESSION IN THE (C) - SECTION OF THIS STATUE (C) 1-A THROUGH E, AND THAT NONE OF THE LISTED AMOUNTS CONSTITUTE 'INTENT") DEFENDENT ARGUES THAT THE AMOUNT OF .08 GRAMS OF COCAINE DOES NOT CONSTITUTE AN "INTENT" AS IT DOES NOT EXCEED AN AMOUNT THAT REASONABLY COULD BE HELD FOR PERSONAL CONSUMPTION. IN ADDITION APPELLANT ARGUES THAT ONE CAN NOT INTEND TO SELL/DISTRIBUTE ANYTHING THAT ONE DOES NOT ACTUALLY POSSES OR HAVE OWNERSHIP OF OR OVER. A PRE-SUMPTION OF CONSTRUCTIVE POSSESSION ARISES AGAINST THE OWNER OF PREMISES UPON WHICH CONTRABAND IS FOUND. HAMBURG V. STATE, 248

So. 2d 430, 432 (Miss 1971); POOL V. STATE, 483 So. 2d. 331, 335-337 (Miss 1986). HOWEVER, WHEN CONTRABAND IS FOUND ON PREMISES WHICH IS NOT OWNED BY A DEFENDENT, MERE PHYSICAL PROXIMITY TO THE CONTRABAND DOES NOT, IN ITSELF, SHOW CONSTRUCTIVE POSSESSION. THUS, MAKING THIS INDICTMENT DEFECTIVE AND VOID. THIS IS A VIOLATION OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION. THIS ISSUE ALONE WARRANT REVERSAL AND RENDER.

GROUND SEVEN

APPELLANT ARGUES THAT HIS RIGHTS TO DUE PROCESS OF THE LAW WAS VIOLATED IN THAT, UNLIKE MIRANDA RIGHTS WHICH CAN BE WAIVED BY CHOSING NOT TO REMAIN SILENT AND THE RIGHT TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY WHICH MAY BE FORFEITED BY A PLEA OF GUILTY. THE DEFENDENT MAINTAINS HIS INNOCENCE AND PROCEED TO ACTIVATE HIS 6TH AMENDMENT RIGHTS TO A SPEEDY AND PUBLIC TRIAL BY JURY OF HIS PEERS. THE APPELLANT WAS FOUND GUILTY BY JURY THEREFORE GUARANTEED THE

RIGHT TO A DIRECT APPEAL / POST-CONVICTION RELIEF WHICH IS IN ORDER WITH DUE PROCESS OF THE LAW. THE APPELLANT CONTENDS THAT ANY ADVERSE DECISION IS APPEAL-ABLE. AN SUCH IS GUARANTEED BY U.S. CONSTITUTION AND CAN NIETHER BE FORFEITED OR TAKEN. SEE: US CONSTITUTIONAL AMENDMENTS SIX, NINE, AND FOURTEEN. THUS, THIS ISSUE ALONE WARRANTS REVERSAL AND RENDER.

GROUND EIGHT

IMPROPER STATEMENT MADE BY THE PROSECUTOR DURING QUESTIONING OF DEFENDENT. THE PROSECUTOR QUESTIONED DEFENDENT ABOUT INFORMATION ON HIS APPLICATION FOR AN COURT APPOINTED COUNSEL. THIS INFORMING THE JURY THAT THE DEFENDENTS COUNSEL WAS APPOINTED AND THAT THE DEFENDENTS FINANCIAL STATUS WAS/IS INDIGENT. THE DEFENDENTS COURT APPOINTED COUNSEL OBJECTED TO THE LINE OF QUESTIONING AND MOTION FOR A MIS-TRIAL. SEE: UNIFORM RULES OF CIRCUIT AND COUNTY COURT PRACTICE (MISS) RULE 3.12. THE OBJECTION WAS SUSTAINED AND THE JURY WAS INSTRUCTED

TO DISREGARD THE STATEMENT THAT HAD BEEN MADE BY THE PROSECUTION; THOUGH THE JURY HAD ALREADY HEARD THE STATEMENT / QUESTION. APPELLANT ARGUES THAT TRIAL COURT ERRED IN NOT GRANTING THE DEFENSES MOTION FOR A MIS-TRIAL, BECAUSE UPON HEARING THE QUESTION THE JURY MAY HAVE BEEN TAINTED BY THE PROSECUTION'S IMPLICATION. THE COURT CAN ONLY ASSUME THE JURY DISREGARDED THE QUESTION, BUT IT CANNOT BE SURE THAT THE MEMBERS OF THE JURY DID NOT BECOME BIAS. WILLIAMS V. STATE (MISS 2007); HOOP V. STATE, 681 So 2d 521, 528 (MISS 1996) THIS GROUND ALONE MERITS REVERSAL AND RENDER. SEE: U.S. CONSTITUTION, AMENDMENT VI

GROUND NINE

APPELLANT ARGUES HIS ACTUAL INNOCENCE AND HIS LEGAL INNOCENCE IN THIS CAUSE AND HAS SHOWN CLEAR EVIDENCE THAT HE HAS NOT POSSESSED COCAINE (.08 GRAM) WITH INTENT TO DISTRIBUTE, SALE, ETC. NOR

HAD HE BEEN IN SIMPLE POSSESSION OF COCAINE (.08 GRAMS) ON THE EVENING IN QUESTION; BUT FOR INEFFECTIVE ASSISTANCE OF COUNSEL; FAILURE OF NARCOTICS AGENTS, INVESTIGATORS, LAB TECHS, ETC TO DUST SAID PACKAGE (WHICH CONTAINED THE ALLEGED .08 GRAMS) OF COCAINE FOR FINGERPRINTS; TRIAL COURTS FAILURE TO FOCUS ON APPLICABLE LAW AND PROCEDURE; CONSTITUTIONAL ERRORS; AND NO REASONABLE JURY THE COURT WOULD HAVE FOUND THAT APPELLANT WAS AND IS NOT GUILTY OF THE CHARGES HELD AGAINST HIM, AND THAT AQUITTAL OF THIS CHARGE WAS IN THE SEVERE INTEREST OF JUSTICE. SEE: SAWYER V. WHITLEY, 505 U.S. 333, 112 S. Ct. 2514 (1992) AND U.S. CONSTITUTION AMENDMENT(S) VI, IX, AND XIV.

CONCLUSION

WHEREFORE PREMISES CONSIDERED, THE APPELLANT PRAYS THAT HIS BRIEF IN SUPPORT OF THIS APPEAL BE RECIEVED AND THIS COURT GRANT THE FOLLOWING RELIEF:

1.) OVER TURN CONVICTION AND ORDER

APPELLANT'S IMMEDIATE RELEASE.

2) REMAND TO THE TRIAL COURT TO AMEND THE CHARGE TO SIMPLE POSSESSION AND FOR RESENTENCING ON AMENDED CHARGE

3) ORDER TRIAL COURT TO GRANT PETITIONER TIME SERVED ON THE CHARGE OF SIMPLE ~~POSSESSION~~ AND

4) REVERSE AND REMAND FOR A NEW TRIAL

5.) GRANT OTHER SUCH RELIEF AS JUSTICE WOULD ALLOW

RESPECTFULLY SUBMITTED AND FOREVER WILL PRAY THIS 22 DAY OF FEB, A. D., 2008

A. T. [illegible]

ALVIN D THOMPSON EL

CERTIFICATE OF SERVICE AS TO FILING

I, ALVIN D. THOMPSON EL, PRO-SE APPELLANT IN THIS CASE CERTIFY THAT I HAVE THIS DATE MAILED, POSTAGE PRE-PAID, THE ORIGINAL AND THREE COPIES OF THE FORGOING BRIEF OF THE APPELLANT TO THE CLERK OF THE SUPREME COURT, SUPREME COURT OF MISSISSIPPI, P.O. BOX 117, JACKSON, MS 39205

THIS 22 DAY OF FEB, A.D., 2008

A. D. Thompson EL

ALVIN D THOMPSON EL

CERTIFICATE OF SERVICE

I, ALVIN D. THOMPSON EL, PRO-SE APPELLANT, CERTIFY THAT I HAVE THIS DATE MAILED POSTAGE PRE-PAID, A TRUE COPY OF THE FOREGOING BRIEF OF APPELLANT TO THE FOLLOWING:

HON. BETTY W. SEPTON, CLERK
MS. SUPREME COURT / COURT OF APPEALS
P.O. BOX 249
JACKSON, MS 39205

JIM HOOD, ESQ
ATTORNEY GENERAL
P.O. BOX 220
JACKSON, MS 39205

THIS 22 DAY OF FEB, A.D., 2008

A.D. EL

ALVIN D. THOMPSON EL