

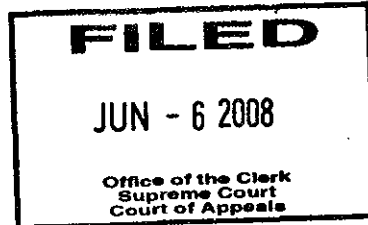
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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

HERMAN LEE WILLIAMS

APPELLANT

VS.



NO. 2007-KA-0270

STATE OF MISSISSIPPI

APPELLEE

RESPONSE OF APPELLANT TO APPELLEE'S
SUPPLEMENTAL BRIEF

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STATEMENT OF LEGAL PROCEEDINGS

On December 6, 2006, Herman Williams filed his Notice of Appeal. Herman Williams ultimately filed his Appellant's Brief with the Supreme Court Clerk on November 13, 2007. The State of Mississippi through the Mississippi Attorney General's office filed their Appellee's Brief on or about January 22, 2008. On March 7, 2008, Appellant, Herman Williams filed his Reply Brief. On April 3, 2008, the Appellant Herman Williams, filed a Supplemental Citation regarding a recent case addressing the speedy trial issue recently handed down by the Court of Appeals subsequent to the Herman Williams filing his Appellant Brief and Reply Brief.

On April 7, 2008, the Court granted William's request for oral argument and scheduled oral argument for May 7, 2008. On the day before the oral argument, the State through correspondence filed a Supplemental Citation. The Supplemental Citation raised a new argument with regards to the issue of jurisdiction. Namely, the State of Mississippi attempted to argue statutes and cases dating back to the 1930's which it failed to argue in its Appellee's Brief. Based on the improper use of supplemental citation, the Appellant, Herman Williams filed a Motion to Strike Appellee's Supplemental Citation. The Court entered an Order on May 20, 2008, striking the State of Mississippi's supplemental citation. However, the Court of Appeals awarded the State thirty (30) days upon which to file a supplemental brief on the issue of jurisdiction and then afforded Appellant Herman Williams thirty (30) days subsequent thereto for a reply.

ARGUMENT

I. THE COURT OF APPEALS SHOULD HOLD THAT THE STATE OF MISSISSIPPI HAS WAIVED ITS ARGUMENT CONCERNING JURISDICTION PURSUANT TO MISS. CODE ANN. § 3-5-3, *ET. SEQ.*

In the Appellee's original brief to the Court of Appeals, the State of Mississippi addressed

Herman Williams' argument that the United States government had exclusive jurisdiction over the area in question where he was arrested rather than concurrent jurisdiction with Mississippi. Herman Williams argued that since the United States had exclusive jurisdiction of the property, then the State of Mississippi had no jurisdiction to arrest or try or convict Herman Williams on property that was under the exclusive jurisdiction of the United States of America.

The State of Mississippi in its brief filed on or about January 22, 2008, argued that the case of Surplus Trading Co. v. Cook, 281 US. 647 (1930), was conclusive case law finding that Mississippi did have the right to prosecute Herman Williams on a crime committed on United States soil.

Notably, the State of Mississippi did not argue the argument made at the trial court by the Warren County District Attorney office concerning Miss. Code Ann. § 3-5-3 *et. seq.* Realizing their mistake the day before oral argument, the State of Mississippi filed a Supplemental Citation. However, based on the State of Mississippi's failure to make their argument timely within their brief, the State of Mississippi has waived that portion of their argument as to jurisdiction.

The Mississippi Supreme Court and Court of Appeals have always held that a Defendant/Appellant has waived his right to a particular issue when said Defendant/Appellant fails to make the argument in his brief. In McGee v. State, 542 So.2d 228, 234 (Miss.1989), the Mississippi Supreme Court held, "This Court has traditionally held that where an assignment of error is not discussed in the brief it is considered abandoned or waived. Taylor v. State, 435 So.2d 701, 703 (Miss. 1983) : Lee v. State, 338 So.2d 338, 395, 397 (Miss. 1976)."

In Lee v. State, 338 So.2d 395, 397 (Miss. 1976), the convicted Defendant appealed to the Supreme Court. One of the issues appealed centered around introduction of a memo pad

containing the Defendant's name. At the trial court level, the Appellant/Defendant objected to the admission of the memo pad on three separate grounds. However, in the Appellant's brief, the Defendant/Appellant only argued one particular ground and did not argue the other grounds for the objection. The Supreme Court held that since he only argued one objection ground in his brief that he had abandoned the other two grounds for the objection. Lee v. State, 338 So.2d at 397.

The Supreme Court has held that an Appellant/Defendant waives his argument when he fails to raise the argument in his brief; therefore, the same principle should also apply equally to the State of Mississippi/Appellee. Since the State of Mississippi/Appellee only argued one portion of the jurisdiction issue in its brief, it waived any other issue as to jurisdiction and therefore should not be allowed later to supplement its brief. The State of Mississippi tries to backdoor in the supplemental pursuant to citation of supplemental authorities MRAP 28(j). However, MRAP 28(j) is not applicable because the rule reads "When pertinent and significant authorities come to the attention of counsel **after the party's brief has been filed**" The State of Mississippi was very well aware of Miss. Code Ann. § 3-3-1 *et seq.* at the trial court level as seen in the record. Therefore, the State of Mississippi did not find any new law subsequent to the filing of its brief. MRAP 28(j) should pertain to law that is handed down by a Court subsequent to the filing of the brief which is in fact exactly what happened and caused Appellant Herman Williams to file its April 3, 2008, Supplemental Citation Record based on a Court of Appeals decision handed down on March 18, 2008.

In conclusion, this Court should hold that the State of Mississippi has waived its claim for jurisdiction pursuant to Miss. Code Ann. § 3-3-1 *et seq.* and only address the State's jurisdiction arguments as found in its original brief.

II. THE UNITED STATES HAS EXCLUSIVE JURISDICTION OVER NAVY CIRCLE AND THEREFORE THE STATE OF MISSISSIPPI DID NOT HAVE JURISDICTION TO TRY AND CONVICT HERMAN LEE WILLIAMS.

The State of Mississippi incorrectly argues Miss. Code Ann. § 3-5-3 provides that Mississippi has concurrent jurisdiction with the United States over Navy Circle in Warren County, Mississippi. Miss. Code Ann. § 3-5-3 clearly states that the Governor of Mississippi may cede jurisdiction to the United States. Furthermore, pursuant to Miss. Code Ann. § 3-5-9, there are certain restrictions on cessation. At the trial, the State of Mississippi argued these code sections based on sections 2395, 2396 of the 1906 Miss. Code. However the conveyance of the subject to property the United States predated 1906.

The State of Mississippi now argues that the same statute is found in the 1892 code. However, they still have not submitted a copy of the 1892 code as proof. However even if the State of Mississippi is correct in such research, which Herman Williams believes the State is incorrect, the statute clearly provides a process when the State of Mississippi conveys property to the United States. In the case of *sub judice*, as stated in his prior brief, the United States obtained this property from private individuals in the 1890's and not from the State of Mississippi.

The State of Mississippi has not met its burden of proof of establishing jurisdiction beyond a reasonable doubt. Therefore, this Court should either dismiss the conviction against Herman Lee Williams or remand for further findings on the record to determine beyond a reasonable doubt that the State of Mississippi has concurrent jurisdiction of Navy Circle.

CONCLUSION

In conclusion, the Court should determine that the State of Mississippi has waived its argument for jurisdiction pursuant to Miss. Code Ann. § 3-3-1, *et. seq.* Alternatively, the Court

should still hold that the State of Mississippi has failed to prove beyond a reasonable doubt that Mississippi has concurrent jurisdiction with the United States over Navy Circle.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I have this day personally delivered a copy of the foregoing Brief to the following:

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Judge Frank G. Vollar
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Dated this the ____ day of June, 2008.


LEE D. THAMES, JR.