IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JUREKA BROWN — APPELLANT

V. — NO.2007-KA-00420-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS
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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JUREKA BROWN APPELLANT

V. NO.2007-KA-00420-SCT

STATE OF MISSISSIPPI APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Jureka Brown
3. Honorable Haldon J. Kittrell and the Marion County District Attorney's Office
4. Honorable R.I. Prichard, III

THIS 7th day of January 2008.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Jureka Brown, Appellant

By: _____
Leslie S. Lee, Counsel for Appellant

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STATEMENT OF THE ISSUES

ISSUE NO. 1 THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO SUPPORT THE VERDICT.

ISSUE NO. 2 THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

ISSUE NO. 3 THE TRIAL COURT ERRED IN HOLDING A JUDGE-ALONE BIFURCATED HEARING TO DETERMINE IF THE SENTENCING ENHANCEMENT EXISTED BEYOND A REASONABLE DOUBT.

ISSUE NO. 4 THE EVIDENCE WAS INSUFFICIENT TO SHOW THE TRANSACTION OCCURRED WITHIN 1500 FEET OF A CHURCH.

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Marion County, Mississippi, and a judgment of conviction for the crime of Sale of Cocaine against the appellant, Jureka Brown. After conviction, the trial judge held a bifurcated hearing to determine if the transaction occurred within 1500 feet of a church as alleged in the indictment. Tr. 196-208, R.E. 18-31. After determining the transaction occurred within 1500 feet of a church, Brown was sentenced to sixty (60) years, with forty-five (45) to serve and fifteen (15) years suspended and five (5) years post-release supervision. C.P. 49-52, Tr. 211, R.E. 34. This sentence was to run consecutive to a ten (10) year revocation of post release supervision from a previous conviction. This sentence followed a jury trial which was held on February 26, 2003, and sentencing on March 7, 2003, Honorable R.I. Prichard, III, Circuit Judge, presiding. Brown was subsequently granted an out of time appeal. C.P. 69. Jureka Brown is presently incarcerated with the Mississippi Department of Corrections.

FACTS

According to the trial testimony, James Irwin Powell, a confidential informant with the Pearl River Basin Narcotics Task Force, made a controlled buy of cocaine from one Chastity Cranford on February 8, 2002. Tr. 71, 96, 147. Powell testified that while in Cranford's apartment, she took him into see the appellant, Jureka Brown, who was in the bedroom watching a movie. Tr. 101-02. Cranford asked if she could sell Powell some crack or weed. Brown nodded, and Cranford said she had to get it out of the car. She asked Brown for the keys and he handed them to her. Tr. 102.

Cranford and Powell left the apartment and went down to Cranford's car. He retrieved money from Agent Donna Davis, an undercover agent waiting for him. Cranford got the drugs out of the car and went back into the apartment. According to Powell, Cranford broke off a piece, held it up to Brown, and he nodded his head that it was okay to sell. Powell then took the cocaine and gave Cranford twenty dollars ($20.00). Tr. 103. Powell testified Cranford then handed Brown the money and he laid it on the bedside table. Tr. 103-04. Powell then left and gave the crack to Agent Davis. Tr. 104. The substance Powell purchased from Cranford was determined by the Crime Lab to be 0.1 gram of cocaine. Tr. 77-78, Exhibit 1.

Bobby Patterson, a member of the Task Force, testified he met with Powell, searched him, and set up the audio and video equipment Powell would use. Tr. 70. The buy was planned for Brown and Cranford's residence. Tr. 71. Agent Davis was given the buy money. Tr. 72. Patterson then provided surveillance for the operation. Tr. 73. He identified the

audiotape that recorded the transaction. Tr. 77, Exhibit 2. Patterson also confirmed the reason why Powell was a confidential informant was because Powell had pending charges. He was hoping for leniency by helping police. Tr. 80.

Patterson also confirmed he listened to the tape, but could not identify Brown. "I hear another male talking on the tape, besides our informant and a female that was there." Tr. 83-84, 87. In Patterson's affidavit against Cranford on March 5, 2002, he alleged Cranford showed the crack to Brown and Brown then told Cranford to sell Powell the crack. Exhibit 4. However, in his case report written the night of the buy, Patterson said nothing about Cranford showing the crack to Brown before finalizing the sale. Exhibit 5, Tr. 85.

Agent Davis was the undercover officer assigned to ride with Powell to the buy. Tr. 128-29. Davis was only able to confirm that Powell went into the apartment and later came out with Cranford. Powell then got the buy money from Davis and returned to the apartment with Cranford. Tr. 129. She did not leave the undercover vehicle during the sale and did not see Brown. Tr. 135, 140.

Cranford testified for the defense and admitted to selling the cocaine to Powell. Tr. 147. However, she testified that she sold the cocaine on her own and did not get Brown's permission before doing so. Tr. 148. She stated that Brown was in the apartment at the time, but no one else was in the living room when the exchange was made. Tr. 147. She stated she did go outside to retrieve the drugs, but no one told her to do it. She took the money from Powell and put it in her pocket. Tr. 150. Cranford testified that Powell never came into contact with Brown while in the apartment. Tr. 154.

Cranford testified that she pled guilty to selling cocaine to Powell and was sentenced to fifteen (15) years with four (4) to serve. Tr. 154, 160. She and Brown both knew Powell, as he was married to her cousin. Tr. 156. Cranford took full responsibility for the sale and maintained she never made eye contact with Brown during the transaction. Tr. 168.

After Brown was convicted by the jury, the trial court excused the jury and held a judge-alone, bifurcated hearing to determine if the transaction occurred within 1500 feet of a church as alleged in the indictment. Tr. 195-206, C.P. 5. Agent Bobby Patterson testified he measured the distance between Cranford's front door and the middle of a building he identified as the Seventh Day Adventist Church. Patterson testified the distance was approximately 720 feet. Tr. 199. Patterson had no personal knowledge that the building was an active church, but only went by the sign in front of the building. Tr. 205. Based solely on the agent's testimony, the trial judge found that Brown was eligible for enhanced punishment pursuant to Miss. Code Ann. §41-29-142(Supp. 1993).

SUMMARY OF THE ARGUMENT

Jureka Brown was sentenced to sixty (60) years with fifteen (15) years suspended based solely on the testimony of a confidential informant who admitted he was trying to work off other pending charges. The informant's only testimony that Brown was involved in the sale was that Brown simply nodded his head during the buy. An alleged nod of the head cost Brown not only sixty years in jail, but another ten years of revoked post-release supervision from a prior conviction. This evidence was clearly insufficient to convict Brown, especially in light of Cranford's testimony that she alone sold the cocaine to Powell. Brown's sentence

enhancement was also improperly conducted by the trial judge alone in a bifurcated hearing. This was a violation of Brown's 14th Amendment Due Process rights to have a jury determine beyond a reasonable doubt if the enhancement was supported by sufficient evidence. Finally, the evidence that was submitted to prove this transaction occurred within 1500 feet of a church was wholly insufficient to support the enhancement beyond a reasonable doubt.

ARGUMENT

ISSUE NO. 1 THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO SUPPORT THE VERDICT.

In Brown's Motion for New Trial or in the Alternative JNOV, he specifically argued that the evidence was insufficient as a matter of law. C.P. 92, R.E. 35. The trial judge denied this motion. C.P. 99, R.E. 38. The trial judge erred in refusing to grant this motion.

"When reviewing the sufficiency of the evidence, this Court looks at the lower court's ruling 'on the last occasion when the sufficiency of the evidence was challenged.'" *Ballenger v. State*, 667 So.2d 1242, 1252 (Miss. 1995), (quoting *Green v. State*, 631 So.2d 167, 174 (Miss. 1994)). The last occasion when Jureka Brown challenged the sufficiency of the evidence was in his JNOV motion. C.P. 92-94. Therefore, this Court is to consider all the evidence presented during the entire trial. *Gibson v. State*, 731 So.2d 1087 (¶12) (Miss. 1998).

"The Supreme Court will reverse the lower court's denial of a motion for new trial only if, by denying, the court abused its discretion." *Esparaza v. State*, 595 So.2d 418 (Miss.1992)(citing *Wetz v. State*, 503 So.2d 803, 812 (Miss. 1987); *Crenshaw v. State*, 520

So.2d 131, 135 (Miss.1988); *Leflore v. State*, 535 So.2d 68, 70 (Miss.1988); *Neal v. State*, 451 So.2d 743, 760 (Miss.1984), *cert. denied, Neal v. Mississippi*, 469 U.S. 1098, 105 S.Ct. 607, 83 L.Ed.2d 716 (1984)). "Under this standard, this Court will consider the evidence in the light most favorable to the appellee, giving that party the benefit of all favorable inference that may be reasonably drawn from the evidence." *Jefferson v. State*, 818 So.2d 1099, 1111 (Miss. 2002)(citing *Coleman v. State*, 697 So.2d 777 (Miss. 1997)). "If the facts so considered point so overwhelmingly in favor of the appellant that reasonable men could not have arrived at a contrary verdict, we are required to reverse and render." *Id.* "On the other hand if there is substantial evidence in support of the verdict, that is, evidence of such quality and weight that reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, affirmance is required." *Id.*

Under federal constitutional law, the test for determining a challenge to the sufficiency of the evidence asks whether a "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, (1979). As set forth in the facts above, the State provided insufficient evidence to prove to the jury beyond a reason doubt that this appellant was involved in any manner in Cranford's sale of cocaine to Powell.

The audiotape is of poor quality. Exhibit 2, Tr. 90-91. The conversation to and from the apartment is almost impossible to hear because of loud clicking noise. Inside the apartment, the noise of the television makes it difficult to hear the conversation. Regardless, Powell noted that Brown's sole participation in the sale amounted to a nod of the head. Tr.

103. Even the prosecutor admitted during his final closing argument that the nod was his entire case. "And I'm asking you return a verdict of guilty of a sale of controlled substance if nothing else buy by a nod of the head, because that's what he did." Tr. 192.

The evidence was simply insufficient to show Powell took any active role in Cranford's cocaine sale to Powell. The audiotape can not corroborate Powell's testimony that Brown nodded his head. Furthermore, even if Brown did nod, it is pure speculation on why he nodded. The nod could have had nothing to do with the sale of cocaine. When the trial court allowed this case to go to the jury on this evidence alone, he allowed a verdict based solely on speculation. Cranford specifically testified Brown was not involved. Tr. 168. She testified that if she could have put this crime off on anybody else, she would have. But she went on to state, "Why should somebody else have to suffer for what I've done?" Tr. 167.

Based on the testimony presented, the trial judge should have granted Brown's motion for a judgment notwithstanding the verdict. The evidence did not show beyond a reasonable doubt that Brown aided and abetted this sale. The jury did not follow Instruction No. 6 which told the jury to view Powell's testimony with greater case than an ordinary witness. C.P. 40. Brown's conviction should be reversed and rendered.

ISSUE NO. 2 THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

In the alternative, if this Court finds the evidence was at least sufficient to go to the jury, then Brown is still entitled to a new trial based on the weight of the weight of the

evidence. In Brown's Motion for New Trial or in the Alternative JNOV, appellant specifically argued that the jury's verdict was against the overwhelming weight of the evidence. C.P. 92-94, R.E. 35-37. The trial judge denied this motion. C.P. 99, R.E. 38. The trial judge erred in refusing to grant this motion.

"In determining whether a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Herring v. State*, 691 So.2d 948, 957 (Miss.1997). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Id. See also Benson v. State*, 551 So.2d 188, 193 (Miss.1989); *McFee v. State*, 511 So.2d 130, 133-34 (Miss.1987).

As argued above in Issue No. 1, Brown was convicted because a confidential informant with the clear motive of self-interest, testified Brown nodded his head during the sale from Cranford. Powell was simply not credible. He knew Brown, but failed to identify him in his statement[1]. Exhibit 6. Powell testified Cranford was pregnant at the time of the sale. Tr. 106. However, this was impossible for him to know, as Cranford could have only been pregnant for a few days, if at all, at the time of the sale. Tr. 152-53. It is entirely reasonable that Powell added Brown to the transaction to help him make another case,

[1] Powell did identify Cranford as "Chastity" in his statement. Exhibit 6.

therefore helping him receive leniency on his pending charges. At the time of trial, Powell stated he was still working with police to secure leniency. Tr. 122.

Normally, the jury weighs the credibility of each witness. *Wetz v. State*, 503 So.2d 803, 812 (Miss. 1987). However, this can be set aside by this Court when the verdict is contrary to the overwhelming weight of the evidence.

> A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, "unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict." *McQueen v. State*, 423 So.2d 800, 803 (Miss.1982). Rather, as the "thirteenth juror," the court simply disagrees with the jury's resolution of the conflicting testimony. *Id.* This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. *Id.* Instead, the proper remedy is to grant a new trial.

Bush v. State, 895 So.2d 836, 844 (Miss. 2005).

In addition to the facts set forth above, Powell was also impeached when asked if he had met with the district attorney in preparing for trial. He denied meeting with the prosecution, stating he did not meet with anyone, but was just subpoenaed to be there. Tr. 113. He then had to backtrack and admit he viewed his statement with the district attorney that very day. Tr. 114. Powell originally stated he received no help in writing his statement. Tr. 115-16. Powell later admitted to getting help spelling certain words. Tr. 120. Powell testified he had "no deal whatsoever" in return for his testimony. Tr. 97. Yet, he certainly expected something in return.

> Q. Have they made you any promises that if you do X, Y, Z, that you will receive leniency?
> A. Yes, sir. Somewhat.
> Q. They have?

A. They hadn't made me no promises, but they told me they would, you know, consider it when my trial comes.
Q. Okay, Earlier you said they hadn't did anything like that; is that correct?
A. They hadn't made – just consider what I done for them.
Q. Okay. Is part of that consideration testifying here today?
A. Yes, sir.
Q. Okay. And that will be giving you leniency a later date?
A. Yes, sir.
Q. Any they haven't given you a deal yet, because you're still waiting on some stuff with your cases, right?
A. Yes, sir.
Q. No nothing unusual about that. You're still working, right?
A. Yes sir.
A. You're working here today?
A. Yes, sir.

Tr. 121-22.

Furthermore, Powell wrote nothing in his statement about Cranford handing the money to Brown. Exhibit 6, Tr. 123. Powell had every motive to lie, as he need a bigger fish than Cranford to help him work off his charges. Fifty-five years to serve, (Brown's current sentence along with his revocation), for an alleged nod of the head would certainly sanction an unconscionable injustice. Brown is entitled to a new trial.

ISSUE NO. 3 THE TRIAL COURT ERRED IN HOLDING A JUDGE-ALONE BIFURCATED HEARING TO DETERMINE IF THE SENTENCING ENHANCEMENT EXISTED BEYOND A REASONABLE DOUBT.

After jury selection was completed, trial counsel asked the court if evidence supporting the enhancement was to be excluded during trial.

MR. IRVIN: Are we going to go on the record at some point before we get started as to the exclusion of the enhancement?

THE COURT: Yeah. Let the record show that the case of Willie Lee Williams A/K/A Black Bill versus State of Mississippi, Number 1999-KA-01666-SCT

> discussed the enhanced penalty of sales within distances of schools and churches. And rightfully determined that this is an enhancement to the punishment, not an element of the crime. Unlike a felony DUI where the DUI first of DUI second are definitely elements of the crime. This is like a second or subsequent offender. Now, the Uniform Rules of Circuit and County Court only speak to enhancement based on prior convictions. But the gist of the rule, I believe, goes to any enhanced penalty. And by agreement of defense, State and the Court this case will be tried on the issue of whether or not Jureka Brown did, in fact, transfer or sale cocaine, a Schedule II controlled substance, on the date of 8 February, 2002, in Marion County, Mississippi. And there will be no testimony or charge brought out to the jury about the possible enhancement due to the 1,500 feet of the church. That if the jury were to find him guilty of the charge of sale or transfer of a controlled substance, then a bifurcated hearing will be held to see whether or not it was within the required distance of the church. And then and only then would the enhanced penalty be imposed. And the jury instructions will just direct the intention of the jury to sale or transfers.

Tr. 52-53.

The appellant submits that this was error as it violated Brown's Sixth Amendment right to trial by jury, as the case of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), had already been decided by the time of Brown's trial and should have been applied. As the trial judge should have been aware, the *Apprendi* Court held the rights guaranteed in the United States Constitution require proof beyond a reasonable doubt of each and every element of the offense. Brown had the right to have the jury decide if the enhancement existed beyond a reasonable doubt.

> ...[T]hese rights indisputably entitle a criminal defendant to "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *United States v. Gaudin*, 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995); see also *Sullivan v. Louisiana*, 508 U.S. 275, 278, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993); *Winship*, 397 U.S., at 364, 90 S.Ct. 1068 ("[T]he Due Process Clause protects the accused

> against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged").

Apprendi, 530 U.S. at 477.

Apprendi was charged with firing shots into the home of an African-American family. He pled guilty to possession of a firearm for unlawful purpose. After the judge accepted the guilty pleas, the prosecutor moved for an enhanced sentence on the basis that it was a hate crime. Apprendi argued that he was entitled to have the finding on enhancement decided by a jury. The United States Supreme Court held, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 490.

Apprendi clearly applies, as the maximum sentence under Miss. Code Ann. § 41-29-139(a)(1)(Supp. 1999), is thirty (30) years. As the State was attempting to enhance Brown's sentence to sixty (60) years under Miss. Code Ann. § 41-29-142 (Supp. 1993), Brown was therefore entitled to have the jury determine whether the transaction was within 1500 feet of a church under the clear language of *Apprendi*. 530 U.S. at 490. The record is void of any waiver by Brown of this constitutional right. The right to a jury trial cannot be waived by counsel. The United States Supreme Court in *Blakely v. Washington,* held that there is nothing to prevent a defendant, even in a guilty plea, from waiving his *Apprendi* rights. However, a defendant must either stipulate to the relevant facts or consent to judicial fact finding. *Blakely*, 542 U.S. 296, 310 (2004), citing *Apprendi* at 530 U.S. at 488. Brown did

neither in this case. This Court can not presume a waiver of a right to a trial be jury from a silent record. *Boykin v. Alabama*, 395 U.S. 238, 244 (1969).

A trial court must satisfy itself that the waiver of fundamental constitutional rights is knowing and voluntary. *Chunn v. State*, 669 So.2d 29, 32 (Miss. 1996), (citing *Godinez v. Moran*, 509 U.S. 389 (1993), *cert. denied sub nom. Moran v. McDaniel*, 516 U.S. 976 (1995).

It is the duty of the trial court to assure that kind of knowledge and volition:

> Not only must the right of the accused to a trial by a constitutional jury be jealously preserved, but the maintenance of the jury as a fact finding body in criminal cases is of such importance and has such a place in our traditions, that, before any waiver can become effective, the consent of government counsel and the sanction of the court must be had, in addition to the express and intelligent consent of the defendant. And the duty of the trial court in that regard is not to be discharged as a mere matter of rote, but with sound and advised discretion, with an eye to avoid unreasonable or undue departures from that mode of trial or from any of the essential elements thereof, and with a caution increasing in degree as the offenses dealt with increase in gravity. *Patton v. United States*, 281 U.S. 276, 312-13, 50 S.Ct. 253, 263, 74 L.Ed. 854, 870 (1930), overruled in part (on different grounds) by *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970).

Chunn, 669 So.2d at 32.

As to this issue, the trial court's reliance on *Williams v. State*, 794 So.2d 181 (Miss. 2001), was misplaced. The *Williams* Court held that the enhancements to Williams's sentence were not unconstitutionally harsh. *Id.* at ¶30-39. The issue was not whether or not a judge-alone bifurcated procedure was proper. The *Williams* Court never addressed the issue in the context of *Apprendi*. The trial judge would acquire the ability to enhance

Brown's sentence only upon a jury's finding that the enhancement exists. The verdict alone does not authorize the enhancement. See *Blakely*, 542 U.S. at 303-04.

The relevant statutory maximum for *Apprendi* purposes is the maximum a judge may impose based solely on the facts reflected in the jury verdict or admitted by the defendant. *Blakely*, 542 U.S. at 296. Without a jury determination on the enhancement, the maximum the trial court could give Brown was thirty (30) years. He was sentenced to thirty (30) additional years on facts the jury did not find by their verdict. Accordingly, this case is required to be remanded for resentenicng.

ISSUE NO. 4 THE EVIDENCE WAS INSUFFICIENT TO SHOW THE TRANSACTION OCCURRED WITHIN 1500 FEET OF A CHURCH.

Even if this Honorable Court were to find the trial judge could determine the enhancement existed, the record indicates the evidence was insufficient to find the sale occurred within 1500 feet of a church. During the sentence enhancement hearing, the State recalled Bobby Patterson. Tr. 197, R.E. 19. Patterson testified he used a measuring device and walked from Cranford's apartment to the center of the front of what he described as a church. Tr. 200. He measured the distance as 720 feet. Tr. 201. When asked if the church was active, his response was, "As far as I know it is." Tr. 199.

There was absolutely no testimony that the church was active. When Patterson was asked if the church had an active charter or was just a closed building, Patterson replied, "It looks to be open to me." He went on to explain that he just believed it was an open church. Tr. 203-04.

Q. Okay. And did you see any activity at the church, any lights or any –
A. I really hadn't looked to that point, no.
Q. Okay. You said there was an old door in front that looked to be –
A. No. There was a place that looked to be an old door in the front, but they built like a window with the colored glass on, that they've built it out and that's the reason where I stopped at the center of the front of the church.
Q. Okay. In your surveillance is it procedure to check and see if the church was active at all?
A. I did not check and see if it was active.

Tr. 204.

Patterson did testify the grounds appeared to be kept up, but could not testify it was being used as a church. Tr. 204-05. All he went by was a sign in front which designated it as a church. Tr. 205. Brown has a fundamental right not to have his sentence enhanced based on ambiguous and elusive testimony. *Williams v. State*, 794 So.2d 181 (¶24) (Miss. 2001).

Unlike the evidence presented in *Foster v. State*, 928 So.2d 873 (¶20-26) (Miss.App. 2005), Patterson could not testify to any degree of certainty that the building in question was a church. In *Foster*, the officer also testified, "as far as I know," the place where the defendant possessed marijuana was a city park. However, he went on to testify the park was maintained by city employees and that he used to play ball in that park. "Everybody knows that's the city park." *Id.* at ¶25. Patterson did not give similar testimony in the case at bar. Accordingly, at the very least, Brown's case should be remanded for sentencing.

CONCLUSION

Given the facts presented in the trial below, Brown is entitled to have his conviction reversed and rendered, or in the alternative, at least reversed and remanded for a new trial based on the lack of credible evidence to support the verdict. Brown's sentencing was also illegal as he was deprived of his Sixth Amendment right to a jury to determine if the sentence enhancement of selling drugs within 1500 feet of a church existed beyond a reasonable doubt.

Respectfully submitted,
MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Jureka Brown, Appellant

By: 
Leslie S. Lee

CERTIFICATE

I, Leslie S. Lee, do hereby certify that I have this the 7th day of January, 2008, mailed a true and correct copy of the above and foregoing Brief Of Appellant, by United States mail, postage paid, to the following:

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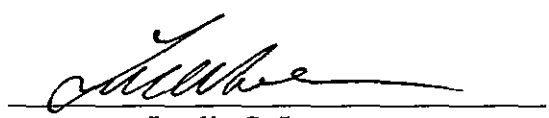

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