

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

NO.2007-KA-01064-COA

KANETHIA EDWARDS

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

**AN APPEAL OF THE CONVICTION FOR AGGRAVATED
ASSAULT IN VIOLATION OF MISSISSIPPI ANNOTATED
CODE SECTION 97-3-7 (2) (B) AND A SENTENCE TO A
TERM OF YEARS WITHIN THE CUSTODY AND CONTROL
OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS**

APPELLANT IS CURRENTLY INCARCERATED

(ORAL ARGUMENT REQUESTED)

**JOHNNIE E. WALLS, JR.
163 NORTH BROADWAY STREET
P. O. BOX 634
GREENVILLE, MISSISSIPPI 38702
(662) 335-6001
(662) 378-8958
E-mail: jewalls1@wallslawfirm.com
Bar No. [REDACTED]**

ATTORNEY FOR APPELLANT

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COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

KANETHIA EDWARDS

APPELLANT

V.

NO.2007-KA-01064-COA

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record hereby 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.

Hon. Jim Hood
Miss. Attorney General
P. O. Box 220
Jackson, MS 39205

Johnnie E. Walls, Jr., Esq.
Attorney For Appellant
P. O. Box 634
Greenville, MS 38702-0634

Laurence Y. Mellen, Esq.
Brenda F. Mitchell, Esq.
Office of District Attorney
Post Office Drawer 848
Cleveland, MS 38732

Martin A. Kilpatrick, Esq.
231 S. Washington Avenue
P.O. Box 500
Greenville, MS 38702-0500

Hon. Albert B. Smith
Circuit Court Judge
P.O. Drawer 478
Cleveland, MS 38732

Kanethia Edwards
MDOC No. 129376
Central Miss. Correctional Fac.
Pearl, MS

WITNESS the signature of counsel for Appellant on this the 18th
day of March, 2008.



Johnnie E. Walls, Jr.

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STATEMENT OF THE ISSUES

I. WHETHER THE COURT WAS IN ERROR BY FAILING TO GRANT THE APPELLANT A JUDGEMENT OF ACQUITTAL, A JUDGEMENT NOTWITHSTANDING THE JURY VERDICT OR A NEW TRIAL WHEN THE RECORD SHOWS THAT THE POLLING OF THE JURY FAILED TO VERIFY A VERDICT OF GUILTY AS REPORTED BY THE JURY AND ACCEPTED BY THE COURT THEREBY DENYING THE APPELLANT A FAIR TRIAL?

II. WHETHER THE JURY'S ABANDONING THE COURT'S INSTRUCTIONS THAT A VERDICT SHALL BE UNANIMOUS AND USING THE MAJORITY RULE TO REACH A VERDICT CONSTITUTED THE INTRODUCTION OF EXTRANEOUS PREDJUDICIAL MATERIAL INTO THE JURY DELIBERATIONS THEREBY DENYING THE APPELLANT A FAIR TRIAL AND WHETHER THE FAILURE OF THE COURT TO CONDUCT AN EVIDENTIARY HEARING TO DETERMINE WHETHER THE APPELLANT WAS ENTITLED TO A JUDGEMENT OF ACQUITTAL OR A NEW TRIAL WAS ERROR?

III. WHETHER THE CUMULATIVE EFFECT OF ERRORS WARRANTS REVERSAL OF CONVICTION AND SENTENCE?

STATEMENT OF THE CASE AND FACTS

The Appellant, Kanethia Edwards , was indicted on or about March 5, 2007 by the grand jury prior to the May Term, 2006 in the First Judicial District of Bolivar County, Mississippi for the charge of aggravated assault in violation of Section 97-3-7 (2) (b) of the Mississippi Code Annotated of 1972, as amended. The Appellant was served with a capias and the indictment on the 8th day of March, 2007 and was arraigned on said date. [(RE. 2,5, & 6)(R.1 & 4)] The Appellant and the Appellee thereafter conducted discovery and the matter proceeded to trial by jury on April 16, 2007.

The indictment charged the Appellant with having unlawfully, willfully, feloniously, and purposely or knowingly cause bodily injury to Angelique Lewis, with a deadly weapon, a knife, on September 27, 2006 in Rosedale, First Judicial District, Bolivar County, Mississippi. The Appellant allegedly stabbed Miss Lewis during a fight between the two following an argument. Both were eleventh grade students at the West Bolivar High School, and both were seventeen (17) years of age at the time of the incident which gave rise to this case. The victim allegedly received cuts to her hand, leg, and two stab wounds to the torso which resulted in a punctured lung. She was taken from the scene of the incident to a

private doctor by a private vehicle and later transported the hospital in Cleveland, Mississippi where she was treated.

The case proceeded to trial on April 16, 2007. The Court convened at 9:37 a.m. The jurors were qualified and voir dire examinations by the Court and counsel for the Appellee and Appellant were conducted. A jury of twelve (12) and two (2) alternates was seated at 11:31 a.m. : No.1, Nancy Hugie; No. 2, Latasha Calmese; No.3, Alex McRae; No.4, Chester Tucker; No. 5., Elise D. Lee; No. 6, William Kurts, Jr.; No. 7, Evon Tyler; No. 8, Odell McAlister; No. 9, Camellia R. Jenkins; No. 10, Anthony Usry; No. 11, James Clinton, Jr.; No. 12, James Cherry; Alternate No. 1, Natasha Warren; and Alternate No. 2, Tiffany Banks.

At approximately 11:33 a.m. the remainder of the unused jury pool was released and the proceedings commenced with the state's opening statement and the calling of witnesses. The State presented its case by calling five (5) witnesses which included the responding police officer, the victim , and three other witnesses to the incidents surrounding the alleged assault. Appellee then rested at 2:29 p.m. The Appellant promptly made a motion of acquittal which was denied, and thereafter commenced the presentation of her defense at 2:44 p.m. She presented three (3) defense witnesses including herself. She finally rested her case at 3:34 p.m. The

Appellee finally rested and presented no rebuttal testimony. The Jury was excused to the jury room and the Court and counsel reviewed jury instructions. The Court convened and the jury was seated at 3: 45 p.m. Jury instructions were read to the jury by the Court, counsel presented closing arguments, and the jury retired for deliberations at 4:20 p.m. At 5:35 p.m. the jury "knocked" and indicated that a verdict had been reached. The Court convened and the jury was seated and announced its verdict at 5:37 p.m. The verdict reported by the jury foreman was "We the jury, find the Defendant Guilty." [(RE. 18, 19-20, 179-180) (R. 27, 28-29)(Tr. 208-209)] The jury was polled by the Court on its' own motion. The judge declared that the verdict was unanimous and released the jury.

[(RE.180)(Tr. 209)]

The Appellant was thereafter sentenced to a term of Six (6) years to serve within an institution under the supervision and control of the Mississippi Department of Corrections, however the Court suspended the execution of said sentence for a period of four (4) years with said suspension to commence after the Appellant has served two (2) years in an institution under the supervision and control of the Mississippi Department of Corrections. Appellant is currently serving her sentence. [(RE. 22-25, 21) (R. 32-35, 31)]

The Appellant via trial counsel timely filed "Defendant's Alternative Motion For New Trial Or Judgment of Acquittal" on April 27, 2007. [(RE. 26-28) (R. 37-39)] Present counsel filed a "Notice of Appearance of Counsel" and "Supplement To Defendant's Motion For A New Trial Or Judgment Of Acquittal, Motion For Reasonable Bail Pending Appeal" with the attached "Affidavit of Anthony Usry" on May 1, 2007. [(RE. 29, 32-33, & 42-43) (R. 40, 44-45, & 42-43)] The Court executed and entered, without an evidentiary hearing, on April 27, 2007 an order overruling "Defendant's Alternative Motion For New Trial Or Judgment of Acquittal" which was filed on May 1 , 2007. [(RE. 34) (R. 47)] entered its "Order Denying Motion For New Trial." The Court further executed and entered on May 8, 2007, without an evidentiary hearing, an order overruling "Supplement To Defendant's Motion For A New Trial Or Judgment Of Acquittal, Motion For Reasonable Bail Pending Appeal" which was filed on May 9 , 2007. [(RE. 35) (R. 48)] On or about May 27, 2007 Appellant via present undersigned counsel filed a "Motion To Reconsider Order Denying Supplement To Defendant's Motion For A New Trial Or Judgment Of Acquittal" seeking and requesting an evidentiary hearing on defendant's "Supplement To Defendant's Motion For A New Trial Or Judgment of Acquittal." [(RE. 36-37)(R. 49-50)] On June 4, 2007 the trial Court without a hearing executed and

entered its "Order Denying Motion To Reconsider" which was filed on June 5, 2007. [(RE. 38-39) (R. 51-52)]

The Appellant via counsel timely filed her notice of appeal on June 14, 2007 and thereafter perfected her appeal to this Court.

SUMMARY OF THE ARGUMENT

Appellant contends that the verdict announced to the Court by the jury foreman was not in conformity with the Court's instructions of law, was not verified on the record by the polling of the jury on the Court's own motion, and the Court erroneously allowed the erroneous jury report to stand as the verdict of the jury after considering Appellant's post trial motions and reviewing the transcript of the polling procedure.

Appellant further contends that by filing the affidavit of Anthony Usry, Juror No. 12, she raised the issue of extraneous prejudicial information being presented to the jury during deliberations which resulted in the jury reporting an illegal guilty verdict based upon a majority vote rather than a unanimous vote as is required by the law and constituted jury misconduct which gave the trial Court basis to convene a hearing as requested by Appellant. The trial Court failed and refused to convene a hearing and conduct an investigation into the truth of the allegation of jury misconduct thereby denying the Appellant a fair trial.

Appellant further contends that upon polling the jury had the Court made sure each juror clearly answered his inquiries he would have known that three of the jurors did not answer affirmatively that they had voted for a guilty verdict, and the trial Court then should have either sent the jurors

back for further deliberations or declared a mistrial had he ascertained that they could not reach a verdict in accordance with Rule 3.10 of the Uniform Circuit And County Court Rules.

Appellant asserts that she is entitled to a judgment of acquittal or at the least a new trial, since the trial Court abused its discretion in denying Appellant's motion for a New Trial and request for a judgment notwithstanding the jury verdict.

Appellant finally argues that the cumulative affect of the errors warrant this Court reversing her conviction of aggravated assault and subsequent sentence.

ARGUMENT

I. WHETHER THE COURT WAS IN ERROR BY FAILING TO GRANT THE APPELLANT A JUDGEMENT OF ACQUITTAL, A JUDGEMENT NOTWITHSTANDING THE JURY VERDICT OR A NEW TRIAL WHEN THE RECORD SHOWS THAT THE POLLING OF THE JURY FAILED TO VERIFY A VERDICT OF GUILTY AS REPORTED BY THE JURY AND ACCEPTED BY THE COURT THEREBY DENYING THE APPELLANT A FAIR TRIAL?

The Appellant contends and asserts here, as in his Motion For A New Trial which included a request for a judgment notwithstanding the jury verdict, that the verdict of "guilty" on the charge made in the indictment was invalid and contrary to the law and unsupported by polling of the jury as ordered by the Court on its own motion.

In paragraph No. 1 of Appellant's "Supplement To Defendant's Motion For A New Trial , Or Judgment of Acquittal And Motion For Reasonable Bail Pending Appeal" Appellant alleges, among other things that "The defendant is informed and believes that the jury verdict was not unanimous and was based upon a majority vote contrary to the law." In ruling upon and denying Appellant's motion, the Court in its order dated and executed on May 8, 2007, said "....having reviewed the motion and finding that the jury was polled and that the Court was satisfied and found that a unanimous decision was reached finding the defendant guilty, does find

that the motion is not well-taken and denies same.” Further in its “Order Denying Motion To Reconsider the Court said:

“The defendant previously filed before this Court a motion for a new trial or judgment of acquittal and motion to supplement said motion . As part of that motion, the defendant argued that she had received information following the trial from one of the trial jurors that the verdict may not have been unanimous. Based in part on the fact that the Court polled the jury and the jurors indicated that the verdict of the jury was also their verdicts, the Court denied the motion.

Now, the Defendant has filed a motion seeking to have the Court reconsider its previous ruling on the ground that she was not afforded an evidentiary hearing. It is the opinion of the Court that the law is clear and an evidentiary hearing is not necessary in this matter. According to Miss. R. Evid. 606(b), a juror is not a competent witness to impeach the validity of the jury’s verdict following trial. The only exception is where there is an allegation that extraneous extrajudicial information was improperly brought before the jury. There is no such allegation contained in the Defendant’s motion. For the foregoing reasons and the reasons stated in the Court’s previous order, the Defendant’s Motion To Reconsider Order Denying Supplement To Defendant’s Motion for a New Trial or Judgment of Acquittal is hereby Denied. ”

Appellant submits that the Court’s ruling is unsupported and unverified by the record. The Appellant filed an affidavit of juror **Anthony Usry** in support of her “Supplement To Defendant’s Motion For A New Trial Or Judgment of Acquittal And Motion For A Reasonable Bail Pending Appeal.” The Motion of Appellant and the attached **Usry** affidavit did raise an issue regarding whether the jury had gone outside of the law in its attempt to reach a verdict and was allegedly influenced by *extraneous*

prejudicial information. In the process of trying to reach a verdict the jury considered and used *extraneous prejudicial information* introduced by one or more of the jurors – deviating from the law and using the majority vote procedure to reach and announce a verdict. The Court, consequently, was incorrect in its assessment that the Appellant did not raise the issue of the introduction of *extraneous prejudicial material*. For the Appellant to allege that the verdict was based on a majority vote contrary to the law did in fact raise the issue of whether extraneous prejudicial information was a factor in the jury reaching its “verdict” of guilty as reported in open Court.

Paragraph No.3 of the Affidavit of Anthony Usry makes it clear that the issue of the introduction of extraneous prejudicial information was provided:

“During the deliberations the jurors, including myself, discussed the case and voted three (3) times on the verdict. The first vote was seven (7) for not guilty and five (5) for guilty. We continued to deliberate and after a which was nine (9) for ‘not guilty’ and three (3) for ‘guilty.’ We continued to deliberate and took a third vote. Prior to the third vote, the foreman, the man with one arm, and others began to discuss that on the next vote we should go by the majority and allow the majority vote to be the verdict of the jury. The foreman suggested that in order to reach a verdict the jury should agree to allow the majority to be the verdict. During the discussion about the majority vote, I, and at least two (2) other jurors voiced that no matter what the vote was, we were going to vote ‘not guilty.’ When the last vote turned out to be seven (7) for guilty and five (5) for ‘not guilty’ one of the ladies on the jury wrote the verdict on a sheet of paper and gave it to the foreman and he knocked on the door. We then went into the courtroom and

the foreman gave the verdict to the court.” [(RE. 30-31)(R. 42-43)]

As is reflected by the record, immediately upon the jury reporting its verdict, the Court on its own motion polled the jury:

THE COURT: I ask the Clerk to read the verdict.

THE CLERK: ‘We, the jury, find the defendant guilty.’

THE COURT: You may sit down . I’ve got one more task.

That is, let me go at the top. Juror 1, I’ll say,

is that your verdict, yes or no?

Juror 1? You got to say ‘yes ‘ or ‘no.’

JUROR # 1: Yes.

THE COURT: Two?

JUROR # 2: Yes.

THE COURT: Three?

JUROR # 3: Yes.

THE COURT: Four?

JUROR # 4: Yes.

THE COURT: Five?

JUROR # 5: Yes.

THE COURT: Six?

JUROR # 6: Yes.

THE COURT: Seven?

JUROR # 7: Yes.

THE COURT: Eight? Nine?

JUROR # 9: Yes.

THE COURT: Ten? Eleven?

JUROR #11: Yes.

THE COURT: Twelve?

All right. The jury has been polled. It's a unanimous decision. Y'all are released. We don't have anymore cases to be heard this week. Thank you for your service. This community would not stand without you."[(RE. 179-180)(Tr. 208-209)]

Although the Court said the decision was unanimous, the record clearly reflects no answer of any kind from jurors 8, 10, and 12. Juror No. 8 was Odell McAllister, Juror No. 10 was **Anthony Usry**, affiant herein, and Juror No. 12 was James Cherry.[(RE. 73-74)(Tr. 42-43)] The record clearly corroborates or verifies the statement made by Juror Anthony Usry when he affirmatively set forth in his affidavit, "During the discussion about the majority vote, I, and at least two (2) other jurors voiced that no matter what the vote was, we were going to vote 'not guilty.' [Emphasis added.] The record clearly shows that there was no response recorded by the Court Reporter in response to the Court's inquiry as to whether the reported verdict was their verdict. The Court, accordingly, was in error when it

declared that the verdict was unanimous, when in fact the record does not show that the reported decision was unanimous.

Appellant was at least entitled at that point to either have the jurors sent back to the jury room for further deliberations or to have the Court to declare a mistrial due to a hung jury. The polling was meaningless if the Court did not make sure that each juror clearly declared on the record their position regarding the verdict, and the Court failed in that regard. The Appellant was thereby denied a fundamental right to a unanimous verdict and a fair trial!

Rule 3.10 of the Uniform Circuit And County Court Rules provides in part:

“The Court shall inquire if either party desires to poll the Jury, or the Court may on its own motion poll the jury. If the Court , on its own motion, or on motion of either party, polls the jury, each juror shall be asked by the Court if the verdict rendered is that juror’s verdict.If a juror dissents in a criminal case or in a civil case if less than the required number cannot agree the Court may: 1) return the jury for further deliberations, or 2) declare a mistrial.” [Emphasis Added.]

The Rule and the procedure regarding polling of the jury presuppose that the Court will assure that a juror will give an audible response to the Court’s mandated inquiry for purposes of the record. The record in this case does not reflect a response from three of the jurors. The only

conclusion which one could reach from the fact that a juror does not give an affirmative audible response that is recorded in the record is that the juror did not agree with the verdict and offered no audible response. That fact is apparent and clear in this case without having to receive any testimony from Juror Usry, since Juror Usry is one of the jurors of which no responses to the polling is found in the record. Under the circumstances of the case at bar, it was error for the trial Court to deny the Appellant the opportunity to develop her claim in an evidentiary hearing. See: **Gatewood v. Sampson**, 812 So2d 212 (Miss. 2002).

In **State v. Taylor**, 544 So.2d 1387(Miss. 1989), the Court has said of polling the jury:

“We have recognized that the purpose of polling a jury is to give each juror an opportunity, before the verdict is recorded, to declare in open court his assent to the verdict which the foreman has returned and thus to enable the court and the parties to ascertain with certainty that a unanimous verdict has in fact been reached and that no juror has been coerced or induced to agree to a verdict to which he has not fully assented. Although defendant's counsel was tardy in his request for a jury poll, the jury was still in the courtroom. The trial court's failure to poll the jury is reversible error. “

The record reveals that the Court in this case failed to achieve the desired result. Although the polling was conducted by the Court on its own motion and not at the request to the Appellant, she has the right to have it conducted properly so there is no question about the validity of the verdict. Since it is clear from the record that the parties have not been *enabled to ascertain with certainty that a unanimous verdict* has in fact been reached in this case, Appellant is entitled to a reversal. See: **McLarty v. State**, 842 So.2d 590 (Miss. 2003)

II. WHETHER THE JURY'S ABANDONING THE COURT'S INSTRUCTIONS AND USING THE MAJORITY RULE CONSTITUTED THE INTRODUCTION OF EXTRANEOUS MATERIAL INTO THE JURY DELIBERATIONS THEREBY DENYING THE APPELLANT A FAIR TRIAL AND THE FAILURE OF THE COURT TO CONDUCT AN EVIDENTIARY HEARING TO DETERMINE WHETHER THE APPELLANT WAS ENTITLED TO A JUDGEMENT OF ACQUITTAL OR A NEW TRIAL?

The Appellant was indicted pursuant to Mississippi Annotated Code Section 97-3-7(2)(b) for the crime of aggravated assault. Upon being found guilty of aggravated assault as charged she was sentenced by the trial court to serve a term of years within the custody and control of the Mississippi Department of Corrections. Appellant asserts that her conviction and sentence are unsupported by the record and are contrary to the law and should be reversed and/or vacated.

Appellant's post trial motions which have been set forth, *supra*, clearly raised an issue of whether she had received a fair trial due to nature of the proceedings. Although the Court ruled to the contrary, appellant raised an issue as to whether the jury was influence by extraneous material or matter during its deliberations, which should have given rise to the Court convening the necessary proceeding to inquire into the matter or to give the Appellant an opportunity to develop her concerns. The Court denied her that opportunity.

The Appellant as stated filed an affidavit of Anthony Usry which demonstrated that extraneous matter had entered into the jury deliberations. His affidavit said:

Prior to the third vote, the foreman, the man with one arm, and others began to discuss that on the next vote we should go by the majority and allow the majority vote to be the verdict of the jury. The foreman suggested that in order to reach a verdict the jury should agree to allow the majority to be the verdict. [Emphasis Added]

Those discussions were out of bounds of the law for any discussion by the jurors, since the Court had given them the law that they should use in reaching a verdict. The Court had instructed the jury:

“Members of the jury, you have heard all the testimony and received the evidence and will shortly hear arguments of counsel. The Court will presently instruct you as to the rules of law which you will use and apply to this evidence in reaching your verdict. When you took your places in the jury box, you made an oath that you would follow and apply these rules of law to the evidence in reaching your verdict in this case. It is therefore, your duty as jurors to follow the which I shall now state to you. You are not to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base your verdict upon any other view of the law than that given in these instructions by the Court.”

[(RE. 10)(R. 18)(Instruction No. C-1)]
[Emphasis Added.]

“The verdict of the jury must represent the considered judgment of each juror. In order to return a verdict it be necessary that each juror

agree thereto. In other words, all twelve jurors must agree on a verdict in this case.”

[(RE. 15)(R. 23)(Instruction No. C-19)] [Emphasis Added.]

The discussion of any matter which was not included within the instruction of law given by the Court or the evidence which the Court had allowed to be introduced and discussed during deliberations was extraneous materials.

As set forth hereinabove, the Trial Court denied Appellant’s post trial motions and request for an evidentiary hearing because as the Court found:

“It is the opinion of the Court that the law is clear and an evidentiary hearing is not necessary in this matter. According to Miss. R. Evid. 606(b), a juror is not a competent witness to impeach the validity of the jury’s verdict following trial. The only exception is where there is an allegation that extraneous extrajudicial information was improperly brought before the jury.”

With respects to the testimony of jurors regarding a verdict, the Mississippi Rules of Evidence, Rule 606(b), provides as follows:

“Upon an inquiry into the validity of a verdict , a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon his or any other juror’s mind or emotions as influencing him to assent to or dissent from the verdict or concerning his mental processes in connection therewith, *except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury’s attention or any outside influence was improperly brought to*

bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.” [Emphasis added.]

Appellant submits that the trial Court erroneously applied Rule 606(b) because clearly the jury considered *extraneous prejudicial information* which was introduced to the deliberation process contrary to the Court’s instructions of law. The Trial Court gave no instructions which could have remotely suggested that the jury could return a verdict based upon a majority vote. That information was clearly *extraneous prejudicial information*, which was introduced by one of the other jurors of his or her own volition, not the Court. The affidavit of juror Anthony Usry raised the question of whether the verdict was in direct contravention of a rule of law that was brought into the deliberation process without the authority of law. The Court could have inquired into the validity of the matter without allowing juror *Usry* to offer testimony about the “*effect of anything upon his or any other juror’s mind or emotions as influencing him to assent to or dissent from the verdictor concerning his mental processes in connection therewith.*” Additionally the record herein regarding the polling of the jury provides corroboration to juror *Usry*, which could have been presented to the Court in an evidentiary hearing as a basis for an investigation into the matter by the Trial Court. Simply put, the Appellant

raised a question of the contravention of the lawful procedures used by the jury following their deliberations, rather than an inquiry into the mental processes of the jurors during their deliberations regarding the evidence. The Trial Court erred by not inquiring into the matter, and his refusal to do denied the Appellant a fair trial.

While relevant case authority is quite clear that the juror will not be allowed to testify about the deliberations—the minds of the juror, that same case law suggests that the Court can inquire into matters brought on by extraneous prejudicial information brought before the jury. Here the extraneous prejudicial information influenced how the jurors reported to the Court, not their deliberations. See: **Gavin v. State**, 767 S.2d 1072 (Miss. Ct. App. 2000); **Payton v. State**, No. 2001-KA-01658-SCT (Miss. Nov. 6, 2003);

In **Perkins v. Dauterive**, No. 2002-CA-0095-COA (Miss. Ct. App. Sept. 21, 2004), the Court said that jurors may testify as to extraneous prejudicial information introduced to the jury by other jurors, not himself, and that an investigation is warranted when there is sufficient evidence to conclude that good cause exists to believe that there was an improper outside influence or extraneous prejudicial information and that the trial

Court is well within its discretion to determine whether the jury was influenced by such information.

In ***Gladney v. Clarksdale Beverage Co., Inc.***, 625 So.2d 407 (Miss. 1993), the Court found that while Jurors will not be allowed to give evidence as to their own misconduct but will be heard to give evidence about the misconduct of other jurors which is calculated to be influential to the verdict. The Court further determined that the Court should conduct a post-trial hearing when the threshold showing is made. Appellant believes and submits that she made the threshold showing in the case at bar that a juror other than the affiant introduced a procedure for reaching a verdict that was outside the realms of the law that had the effect of influencing other jurors, other than the affiant and two other jurors, to report a verdict based upon a majority vote.

Appellant submits that she clearly made the threshold showing that an improper and illegal procedure had been used by the jury to reach a verdict to her detriment contrary to the law and the Trial Court erroneously denied her the opportunity for an investigation into the matter.

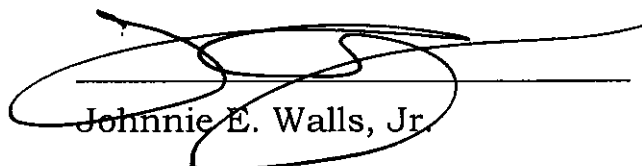
III. WHETHER THE CUMULATIVE EFFECT OF ERRORS WARRANT REVERSAL OF CONVICTION AND SENTENCE?

In **Genry v. State**, 735 So. 2d 186 (Miss. 1999), it is stated that the Court may reverse a conviction and sentence based upon the cumulative effect of errors that independently would not require reversal. It also stipulates that where there is no reversible error in part, there is none to the whole. ***Id.*** at 201. In the case at bar, the clarity with which the records fails to verify that there was a unanimous verdict, the failure and refusal of the trial judge to grant the Appellant an evidentiary hearing to determine whether the Appellant could produce evidence in support of her claim that jurors had used extraneous prejudicial information to avoid a unanimous the verdict and that the Appellant had been convicted on a majority vote verdict rather than a unanimous vote of the jury in contravention of the law, and the clarity which Juror Usry's affidavit raised the issue of the introduction of extraneous prejudicial material into the deliberation process which was contrary to the law that was given to the jury by the Court, support Appellant's cumulative effect claim.

CONCLUSION

For the above stated reasons Kanethia Edwards, Appellant herein, respectfully requests that this Honorable Court reverse and render her conviction and sentence herein, and/or remand her case to the trial court for a new trial or further appropriate proceedings.

Respectfully submitted,



Johnnie E. Walls, Jr.

CERTIFICATE OF SERVICE

I, Johnnie E. Walls, Jr., attorney of record for Appellant, hereby certify that I have this day caused to be mailed by first-class mail, postage prepaid, and/or hand delivery a true and correct copy of the foregoing Brief of Appellant to:

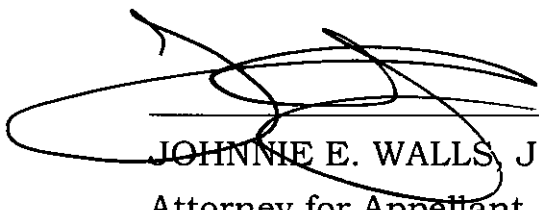
Hon. Jim Hood
Miss. Attorney General
P. O. Box 220
Jackson, MS 39205

Hon. Laurence Y. Mellen, District Attorney
Hon. Brenda Mitchell, Assistant District Attorney
P.O. Box 848
Cleveland, MS 38732

Hon. Albert B. Smith
Circuit Court Judge
P.O. Drawer 478
Cleveland, MS 38732

Kanethia Edwards
MDOC No. 129376
Central Miss. Correctional Facility
Pearl, MS

This the 18th day of March, 2008.



JOHNNIE E. WALLS, JR.
Attorney for Appellant