

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LISA ANN MOSELY

APPELLANT

VS.

NO. 2007-KA-1079

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

PROCEDURAL HISTORY

Lisa Mosely was arrested July 27, 2006, and subsequently indicted on October 18, 2006, by a Tippah County Grand Jury for sale of cocaine, a violation of Miss. Code Ann. § 41-29-139(a). (RE 3). Mosely entered a plea of not guilty plea and proceeded to a trial by jury, which commenced May 8, 2007, in the Circuit Court of Tippah County with Honorable Henry L. Lackey presiding. (RE 7; TR 5).

During the course of the three day trial, defense counsel moved on two occasions for a continuance based on what he claimed were discovery violations on behalf of the State. Defense counsel claimed the State failed to properly identify and produce relevant information regarding a State witness. (T6-13, 70-74). The Court denied the motion and permitted defense counsel an opportunity to interview the witness. At the conclusion of the State's case, defense counsel moved for a directed verdict based on an insufficiency of evidence, which the trial court denied. (TR 263-265). During closing arguments, defense counsel objected to several comments made by the

prosecution in its final closing and moved for a mistrial, which the trial court denied. (TR 185, 187, 235-36, 263-65, 292-96).

On May 10, 2007, after three days of trial, the jury returned a verdict finding Mosley guilty of the sale of cocaine. (TR 299; RE 31). The trial court sentenced Mosely to twenty years in the custody of the Mississippi Department of Corrections with five years suspended upon good behavior, and post-release supervision of five years. (TR 307; RE 43). Feeling aggrieved, Mosely appealed assigning the following four errors:

1. The evidence was not sufficient to support a conviction of the defendant, therefore the lower court committed reversible error by refusing to grant Defendant's motion for directed verdict.

2. The lower court committed reversible error by denying Defendant's motion for continuance requested based on U.R.C.C.C. 9.04 Discovery Violations.

3. The lower court committed reversible error by overruling the defense's objection to testimony of Mac Lowery as a rebuttal witness during the state's case-in-chief.

4. The lower court committed reversible error by denying the defense's motion for mistrial based on the State's highly improper final closing argument.

STATEMENT OF THE FACTS

Malcolm Roy Yancy, also known as Mike Yancy, an admitted crack cocaine addict, supported his addiction by fraudulently writing bad checks in Tippah County and Union County. It is unclear how many bad checks resulted in criminal prosecution and convictions because Yancy's mother paid off many of the bad checks. (TR 85, 189, 214).

On March 24, 2006, Chris McCallister a narcotics agent with the Tippah County Sheriff's Department, and Mac Lowery, Chief of the Blue Mountain Police Department, met with Mike Yancy to set up an undercover drug buy. (TR 91-92). McAllister testified it was a standard pre-buy meeting to an undercover drug operation. Yancy, while wearing a hidden camera that provided video and audio, was to purchase illegal drugs from Lisa Mosely. They gave Yancy \$40.00 to pay Mosely for a preexisting drug debt and an additional \$100 to make another purchase. (TR 87-89). As standard procedure at pre-buy meetings, the two law enforcement officers searched Yancy and his car for any illegal narcotics. McCallister also attached the hidden camera to Yancy's clothing before Yancy left in his own car. (TR 86-90, 153, 160, 197, 220).

The picture quality of the video on the CD is far from professional quality. (S-EX 2). The camera was apparently positioned at Yancy's midriff and pointed upwards which provided less than a clear view of Lisa Mosely and the drug deal. However, you can see Lisa Mosely two different times for a few seconds. A review of the CD shows Yancy driving, then exiting his car, walking up to a door, entering the home and making the drug buy from Lisa Mosely.

In the video you hear Yancy pay \$40 dollars on his debt. Mosely reminds Yancy he still owes her \$30. Yancy asks her, "Can I owe you \$30, and buy a hundred?" She agreed; he counted out \$100 and took a seat. A few minutes pass and Mosely appears and hands Yancy something. Once again the view from the camera is askew but it appears to be something in a small clear bag.

Mosely leaves and returns to his car. (S-EX 2; TR 201-04).

Yancy heads to a post-buy meeting with McCallister and Lowery. Although Yancy should have gone straight to the post buy meeting, he made two brief stops. Both stops happen to be with other cocaine addicts. While headed to the meeting Yancy approaches another car. Jeanie, later identified as the driver of the car, has her hand out the window flagging him down. Afraid Jeanie might follow him to the post-buy meeting Yancy pulls his car off the road beside her car and stops. You hear Jeanie asking Yancy if he has gotten her ring and they engage in a short conversation. Yancy tells Jeanie to go to Patty's house. Patty is Yancy's wife. You never hear or see Yancy exit his car at this stop. You never see Jeanie and never hear her approach Yancy's car. (S-EX 2; TR 204-07). Yancy then drives to Patty's house. You hear Yancy telling the camera that he is stopping to tell Patty that Jeanie was on her way over. You hear Yancy pull into his driveway and talk briefly with Patty. Again, you never hear or see Yancy leave his car and you never hear or see Patty approach the car. In fact you clearly hear Patty talking at a distance. (S-EX 2; TR 207-09).

Yancy then returns to the a prearranged post-buy location to meet with McCallister and Lowry. Prior to turning the camera off, Yancy holds the drugs up to the camera explaining there are five \$20 pieces of crack cocaine that he placed in his personal drug container after being purchased from Lisa Mosely. (S-EX 2; TR 210).

After turning the crack cocaine over to the officers, they searched Yancy and his vehicle again. No drugs or drug contraband, such as a cocaine pipe, were found. (TR 175). Yancy made a verbal statement of the transaction while McCallister wrote it down and then signed it. Yancy did not give McCallister Lisa Mosely's county road address. (TR 147).

Yancy earned a total of \$100 for the undercover drug purchase. McCallister gave him \$40 cash at the pre-buy meeting to be applied toward his previous drug debt with Lisa Mosely and an

additional \$60 cash at the post-buy meeting. (TR 152).

McCallister and Lowry did not follow Yancy to Mosely's house. McCallister testified he didn't always follow confidential informants during an undercover operation because he might be recognized thereby jeopardizing the drug deal. Such was the case here. (TR 90-91).

McAllister testified to his usual procedure for completing his case reports. He types his case report on his own computer using his surveillance notes. Approximately a month after the drug deal with Mosely, McCallister used his surveillance notes from the pre-buy and post-buy meetings to generate his case report. His surveillance notes have Mosely's address on County Road 848. (S-EX 4; TR142-144). McCallister testified that sometimes he uses a form from another case that is already on his computer and plugs in the facts on the current case. McCallister pointed out that Yancy had made several undercover purchases for McCallister on and around County Road 848 prior to March 24, 2006. McCallister then emails his report to the Mississippi Bureau of Narcotics Tupelo office and the secretary takes his information and pastes it to a final report and emails it back to McCallister for his and his supervisor's review. He makes corrections and sends it back to MBN who in turn prints it out and gives it to the district attorney for presentation to the grand jury. McCallister believes when he printed out the report for his supervisor to review, the mistake in Lisa Mosely's address was noted and corrected, however, the rough draft was sent back to the MBN without the correction. Finally, right before Mosely's trial, someone brought to McCallister's attention the discrepancies in the addresses and the correction was made. (TR 140-47).

The address and location of the drug transaction, Lisa Mosely's home, were never at issue with the law enforcement officers involved. Except for being in Tippah County, Mosely's indictment does not identify where the cocaine sale occurred. (RE 2). The morning of the first day of trial, McCallister provided defense counsel with another copy of his case report with the address

corrected. (TR 142).

Chief Mac Lowery of the Blue Mountain Police Department who testified that he had lived in Blue Mountain most of his life was familiar with Lisa Mosely. In July 2006, he took the MBN to Mosely's mobile home at County Road 710 to arrest her. He entered the mobile home at the time of the arrest and was able to identify it in the CD from the March 2006 drug operation Yancy filmed. He also identified Lisa Mosely as being the woman in the video selling Yancy drugs. (TR 248-49).

Alisha Waldrop, the lab analyst from the Tupelo Crime Laboratory, testified that she could identify Exhibit S- 3 as the substance she tested and that it was cocaine. (TR 120).

SUMMARY OF THE ARGUMENT

The State presented sufficient evidence to establish Lisa Mosely's guilt beyond a reasonable doubt. The narcotics agent testified concerning the pre-buy and post-buy meetings with Mike Yancy.

Yancy testified to the drug transaction. The partial video and complete audio from the hidden camera show Yancy purchasing drugs from Lisa Mosely. The narcotics agents identify Lisa Mosely in the video. At trial, Yancy identified the cocaine he bought from Lisa Mosely. The crime lab analyst identified the substance as cocaine. The jury heard the testimony and saw the video and then found Lisa Mosely guilty of selling crack cocaine to Yancy.

The trial court is given wide discretion in admitting evidence and granting continuances; an appellate court will not disturb the trial court's ruling unless there was a clear abuse of discretion. Defense counsel was afforded ample opportunity to question Yancy prior to commencement of the trial.

Defense counsel was on notice that Chief Lowery might testify; his name was listed in Yancy's statement of the drug transaction and in McCallister's report, the State voir dired the jury on Lowery, and he was with the other witnesses from the beginning of the trial.

The prosecutor's final closing remarks were not inflammatory and were not meant to embitter the jury but were in response to defense counsel's closing argument.

Any errors made by the trial court were harmless, did not prejudice Mosely and therefore are not reversible error.

ARGUMENT

THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT.

Mosley contends as her first error of assignment that the lower court erred in denying her motions for a directed verdict because the State failed to present evidence sufficient to support a verdict finding Mosely guilty beyond a reasonable doubt. This argument is contrary to the record.

On reviewing a trial court's denial of a motion for a directed verdict the standard for review is an abuse of discretion standard where it must be determined "whether the evidence shows beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction." *Robinson v. State*, 967 So.2d 695, 697 (citing *Dilworth v. State*, 909 So.2d 731, 735 (Miss.2005) quoting *Carr v. State*, 208 So.2d 886, 889 (Miss.1968)). On review, all evidence supporting the verdict must be accepted as true, and the State must be given the benefit of all reasonable inferences that could be drawn from the evidence. *Bell v. State*, 910 So.2d 640, 646 (Miss.App.2005). If under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict or JNOV should be overruled. *Brown v. State*, 556 So.2d 338 (Miss. 1990), *Davis v. State*, 530 So.2d 694 (Miss.1988). A finding that evidence is insufficient results in a discharge of the defendant. *May v. State*, 460 So.2d 778, 781 (Miss.1984).

The appellate court will reverse only when reasonable and fair-minded jurors could only find the accused not guilty. *Wetz v. State*, 503 So.2d 803, 808 (Miss.1987). It is the jury's duty to resolve any conflicts in testimony. *Groseclsoe v. State*, 440 So.2d 297, 300 (Miss. 1983).

In support of her argument, Mosely claims Mike Yancy, the confidential informant, had a motive or incentive to lie to the narcotics agent about purchasing cocaine. In light of the CD, the

theory that Yancy would go through faking the purchase of cocaine from Lisa Mosely in order to help his cause with law enforcement is ludicrous and totally unsupported by the evidence.

A single review of the CD shows Yancy purchasing drugs from Lisa Mosely, there's no elaborate scheme to create a fake cocaine purchase and then turn over five \$20 rocks of cocaine to the narcotics officers. The CD, while not of professional quality, plainly shows the interior of Lisa Mosely's mobile home; it shows Mosley's face several times; and then Mosley passing something in a small clear bag to Yancy. From the CD audio, you hear Yancy ask Mosely if he can pay her \$40, owe \$30 and "buy a \$100 worth." (S-EX 2; T 220).

Yancy, Agent Chris McCallister and Chief Lowery identify Mosely in the CD. There is no evidence to dispute that she is not the drug dealer in the CD.

Next, Mosely questions the integrity of the undercover drug purchase because she claims there is no evidence of a pre-buy search of Yancy or his car by the narcotics agent and because Yancy made two unscheduled stops between the drug purchase and the post-buy meeting. Mosely argues that because the pre-buy meeting was so brief there was no time for a search of Yancy or his car.

Agent McAllister and Yancy both testified that at the pre-buy meeting, McAllister and Chief Lowry conducted a search of Yancy and his car. The two men are both experienced law enforcement officers and a search would not take them long. Law enforcement officers, at a pre-buy meeting, are not expected to conduct a strip-search of the confidential informant or take the interior of his car apart in search of drugs. Also, there was no wiring of the vehicle with a camera and recorder. Agent McCallister attached a single, small, hidden camera to Yancy.

Mosely adequately explained the two unscheduled stops he made after the drug purchase. Once again the video in the CD is not of professional quality, however, both stops can be heard on

the CD. Mosely explained the Jeanie, that Jeanie, the “ring lady,” was in her car and flagged him down. He was afraid if he didn’t stop, she would follow him to the post-buy meeting with Agent McCallister. You can see and hear that he never exits his car and you never hear Jeanie close to his car. You hear Yancy tell her to go to his wife’s house. Yancy then drives to Patty’s house to tell her Jeanie is coming over and he will be back shortly. Once again you never hear Yancy exit his car and you hear Patty at a distance. Passing cocaine at either of these two brief unscheduled stops, as Mosely claims, is not only highly unlikely but highly improbable and unsupported by the record.

Finally, to support her argument of insufficient evidence Mosely attacks the incorrect address listed in Agent McCallister’s first case reports. Agent McCallister adequately explains the error. Yancy testified that he bought the cocaine at Mosely’s residence and identified it in the CD. Lowery arrested Mosely at her home and could therefore identify it in the CD. As the trial judge pointed out, proving the exact location of the sale was not an element of the crime. The location of the drug deal is not determinative of whether Mosely sold cocaine to Yancy.

Finally, while testifying, Alisha Waldrop, the lab analyst from the Tupelo Crime Laboratory, identified Exhibit S- 3 as being the substance she tested and it was cocaine.

When the evidence presented by the prosecution was taken as true together with reasonable inferences, there was more than sufficient, credible evidence in support of the jury’s verdict.

THE TRIAL COURT PROPERLY DENIED MOSELY A CONTINUANCE.

Mosley asserts as her second assignment of error that the trial court committed reversible error in refusing to grant her a continuance based on the State's prejudicial discovery violations. There was no wilful violation of discovery on the part of the State.

Pursuant to a request for discovery, the State provided Mosley with a copy of the State's file in February 2006. However, defense counsel claimed he could not find any criminal history on Mike Yancy and approached ADA Luther the day before the trial. Luther explained the State thought Yancy's first name was Mike but it turned out to be Malcolm. (TR 72). ADA Luther went on to explain that Yancy's cooperative relationship between law enforcement came from Yancy having written some bad checks in Union County and Tippah County to support his cocaine habit; and that there was a court file in Tippah County for bad checks. Prior to the commencement of the trial, defense counsel moved for a continuance which the trial court denied but gave defense counsel time to interview Yancy. According to defense counsel, Yancy was forthcoming about his criminal past and cocaine addiction.

The same day, defense counsel moved for a continuance again claiming he was not ready to defend his client in light of the new information. (TR 74). Defense counsel claimed Yancy's "credibility is a central issue in this case. It is the thrust of our defense, that is, that the jury can't trust him because he's not trustworthy, he's a liar, that sort of thing, and I need all the information that I can get to help me in that regard." (TR 71).

Agent Chris McCallister testified Yancy was writing bad checks "everywhere" to support his cocaine habit. At the time of the undercover operation on March 24, 2006, Yancy had a "bunch of checks" out in different places, but McCallister did not know of any pending charges. McCallister testified Yancy had about thirteen cases in Tippah County of writing checks on

closed accounts, one resulting in a conviction. (TR 156). McCallister told the jury Yancy eventually ended up in trouble over the checks and was incarcerated in the Marshall County Correctional Facility at the time of trial. (TR 111). Yancy was initially sentenced to the restitution center until the checks were paid back. Yancy's mother paid off the checks so he was put on probation. McCallister admitted that on the recommendation of law enforcement Yancy received probation.(TR 157). Yancy violated his probation so it was revoked and he was incarcerated. (TR 112, 160). McCallister testified drug addicts were not trustworthy, that he was not vouching for Yancy; that Yancy was not completely trustworthy. (T 128, 132). McCallister said "He's never given me any doubt as far as working with me to show me that he was not trustworthy as far as what I wanted him to do besides that little minute thing of stopping." (TR 162). Defense counsel thoroughly cross examined McCallister on thirteen of Yancy's bad checks. (TR 164).

The second day of trial, Yancy testified and admitted to the jury he wrote bad checks to support his cocaine habit. According to Yancy, he had known Chief Lowery his entire life. It was common knowledge Yancy was a drug addict and Lowery approached him about making undercover buys. Yancy, thinking he had been on the wrong side of the law for too long, agreed to help. He made 24 undercover buys for law enforcement. Yancy testified the Chief didn't offer him any kind of deal to help him and he didn't feel he would be sent to prison if he didn't cooperate. Yancy admitted to being a fraud, a liar, and a thief and that he would manipulate people to support his drug habit. (TR 218). There is not much more defense counsel could have put before the juror to impeach Yancy's testimony.

The State would further contend that in Jury Instruction D-10 the trial court cautioned the jury on weighing the credibility of a paid informant. (RE 22).

The decision to grant or deny a motion for continuance is entrusted to the sound discretion of the trial court. *Coleman v. State*, 697 So.2d 777, 780 (Miss. 1997). The appellate court will reverse such decisions only to prevent a manifest injustice. *Id.* In *West v. State*, 969 So.2d 147 (Miss.App.,2007) this Court ruled the trial court failure's to *sua sponte* grant defendant additional continuance to review evidence provided by the state for the first time on morning of trial, was not error, where time given to defendant was reasonable and he was unable to show any prejudice resulting from the court's failure to *sua sponte* grant him additional time to review records.

When you put together the discovery provided the defense in February 2006, along with the information the State provided the day before trial, the opportunity to interview Yancy a day before cross examining him, in addition to the evidence obtained from the State's witnesses, defense counsel was provided with more than adequate time and evidence with which to impeach Yancy's testimony and defend his client. Denial of the continuance did not prevent defense counsel from making his arguments, or cross examining the witness regarding his criminal history and drug addiction. Therefore, there was no prejudice to Mosely and no reversible error.

THE TRIAL COURT PROPERLY ADMITTED THE TESTIMONY OF CHIEF MAC LOWERY.

Mosely contends that the trial court committed reversible error when it allowed the State to introduce Chief Mac Lowery's testimony during the State's case-in-chief. The State offered Lowery's testimony during its case-in-chief to rebut testimony concerning the address of the drug transaction and Lisa Mosely's address. While technically he was not a rebuttal witness, Lowery's testimony was in the nature of rebuttal. During his cross examination of McCallister and Yancy, the defense counsel put into question whether the drug transaction as seen in the CD was in fact Lisa Mosely's address. Lowery was offered solely to rebut the defense's argument that the drug deal as seen in the video did in fact take place at Lisa Mosely's home.

Rule 103 of the Mississippi Rules of Evidence reads, in part, as follows:

RULE 103. RULINGS ON EVIDENCE.(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

...

No substantial right of Mosely's was affected and she was not prejudiced. Defense counsel cannot claim complete surprise about Chief Lowery testifying. Defense counsel even admitted he knew the previous day that Lowery would be called as a rebuttal witness. (TR 240). The State provided Mosely a copy of its file in February 2006. (TR 242; RE 12). In the file is Yancy's only statement, a post-buy statement hand-written by Agent McCallister, which refers to Lowery and McCallister at the pre-buy meeting. (TR). The State even voir dired the jury on Chief Lowery. (TR 29).

The trial court permitted Lowery to testify because defense counsel properly made a question of the address and location of the drug transaction and because Lowery's name as a witness was in voir dire, was disclosed as being present at the pre-buy and post-buy meetings,

and was disclosed as being the arresting officer. (TR 245). The court further ruled that even though Lowery's testimony was not technically rebuttal, it was rebuttal in nature. As previously stated, the only purpose of Lowery's testimony was to rebut the cross examination of McCallister and Yancy on Lisa Mosely's address.

The trial court has considerable discretion in matters pertaining to discovery, and its exercise of discretion will not be set aside in the absence of an abuse of that discretion. *Payton v. State*, 897 So.2d 921 (Miss. 2006), *Flora v. State*, 925 So.2d 797 (Miss., 2006).

THE COURT DID NOT ERR IN DENYING MOSELY'S MOTION FOR A MISTRIAL.

As her final assignment of error, Mosley claims the trial court erred by denying her motion for a mistrial based on the prosecutor's improper closing argument. Mosely argues the prosecutor improperly invited the jury to think of someone they knew who would be willing to work as a confidential informant. The defense argues that the prosecutor implied to the jury that they should blindly believe Yancy's testimony because no one except drug dealers will act as confidential informants. Finally Mosely claims the prosecutor's comments were an attempt to embitter the jury's sense of responsibility for Tippah County's copious drug problem.

ADA Luther's final remarks that Mosely finds so objectionable were in response to defense counsel telling the jury that Yancy was a liar and drug addict and should not be believed. The prosecutor didn't ask the jury to blindly believe Yancy, as Mosely asserts.

The prosecutor clearly asks the jury to convict Mosely if they believe beyond a reasonable doubt that Mosely committed the crime. He goes on to say that if they believe her guilty beyond a reasonable doubt but acquit her then it is on their conscience. That is not inflammatory or an attempt to embitter the jurors sense of responsibility for the drug problem. It is a statement that it is on their conscious if they do not follow their oath as jurors to follow the law.

"Whether to declare a mistrial is committed to the sound discretion of the trial court." *Johnson v. State*, 666 So.2d 784, 794 (Miss.1995) (citing *Brent v. State*, 632 So.2d 936, 941 (Miss.1994)). "Trial courts are allowed considerable discretion to determine whether or not the conduct of an attorney in argument is so prejudicial that an objection should be sustained or a new trial granted." *Henton v. State*, 752So.2d 406, 409, *Harvey v. State*, 666 So.2d 798, 801

(Miss.1995) (citing *Edmond v. State*, 312 So.2d 702, 705 (Miss.1975)). “The test to make such determination is whether the natural and probable effect of improper argument is to create unjust prejudice against the accused so as to result in a decision influenced by prejudice.” *Harvey*, at 801 (citing *Johnson v. State*, 596 So.2d 865, 869 (Miss.1992)).

Considering Yancy’s testimony and the video and audio provided in the CD, the evidence of Mosely’s guilt is so overwhelming, that ADA Luther’s comments were insignificant.

In order to make an appropriate assessment of a prosecutor’s allegedly improper closing argument, the reviewing court must not only weigh the impact of the prosecutor’s remark, but must also take into account defense counsel’s opening and closing arguments. See *Hodges v. State*, 912 So.2d 730 (Miss.,2005).

The Court has held when the prosecutor’s comments are “sufficiently insignificant” in the overall context of the case, it is not reversible error. See *Chisolm v. State*, 529 So.2d 635 (Miss.1988).

In the case at bar, the trial judge listened to defense counsel’s closing argument and did not consider the prosecutor’s comments inflammatory or prejudicial to Mosely. Therefore, the court correctly denied Mosley’s motion for mistrial.

CONCLUSION

Agent McCallister's testimony, as corroborated by Yancy, established Yancy left the pre-buy location with no drugs on his person or in his car. Yancy testified he drove to Lisa Mosley's house where she sold him five \$20 rocks of cocaine for \$100 and subsequently returned to the post-buy meeting, all of which was corroborated by the CD. Yancy turned the cocaine over to Agent McCallister and Chief Lowery who subsequently submitted it to the crime lab for testing. Finally, the testimony of the Crime Laboratory analyst established that the substance recovered from Yancy was cocaine.

Judging these facts most favorable to the State, a reasonable juror could find Mosely was guilty beyond a reasonable doubt. The weight of the evidence against Mosely demonstrates that sufficient proof was offered by the State for the jury to find her guilty of sale of cocaine pursuant to Mississippi Code Annotated § 41-29-139.

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the jury verdict and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa L. Blount, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 21s day of April, 2008.



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