

IN THE COURT OF APPEALS, STATE OF MISSISSIPPI

CHALDRICK BETTS

APPELLANT

v.

CASE NO.: 2007-KA-01283-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLANT

**APPEAL FROM JURY VERDICT
LEE COUNTY CIRCUIT COURT**

**Lori Nail Basham
Mississippi Bar No. [REDACTED]
117 South Gaither Street
Post Office Box 1726
Fulton, Mississippi 38843
Telephone - (662) 862-6633
Facsimile - (662) 862-7633**

ORAL ARGUMENT IS NOT REQUESTED.

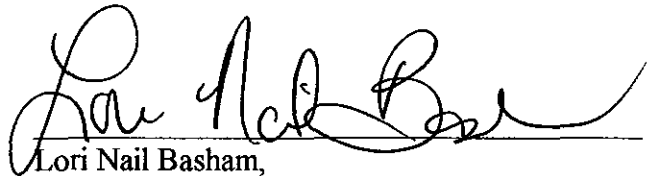
I. CERTIFICATE OF INTERESTED PERSONS

CHALDRICK BETTS vs. STATE OF MISSISSIPPI

CASE NUMBER: 2007-KA-01283-COA

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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Mr. Chaldrick Betts, Appellant
2. Mr. David Daniels, Esquire, Assistant District Attorney of Lee County
3. Mr. Dennis Farris, Esquire, Assistant District Attorney of Lee County
4. Honorable Jim Pounds, Lee County Circuit Court Judge
5. Ms. Angela Jones, Esquire, Trial Attorney

A handwritten signature in black ink, appearing to read "Lori Nail Basham", is written over a horizontal line.

Lori Nail Basham,
Attorney of Record for Chaldrick Betts

II. TABLE OF CONTENTS

	<u>Page Number</u>
I. Certificate of Interested Persons	1
II. Table of Contents	2
III. Table of Authorities	3
IV. Statement of Issues	5
V. Statement of Case	6
VI. Summary of the Argument	8
VII. Argument	9
VIII. Conclusion	16

III. TABLE OF AUTHORITIES

<u>Statutes</u>	<u>Page Number</u>
MISS. RULES OF EVIDENCE 404(A)(3)	9
MISS. RULES OF EVIDENCE 607	9
MISS. RULES OF EVIDENCE 608(B)	9, 12
U.S. CONSTITUTION, AMEND. VI	11, 13
MISS. CONSTITUTION, ARTICLE III, §26	11, 13
 <u>Case Law</u>	
<u>Ford v. State</u> , 753 So.2d 489 (Miss. Ct. App. 1999)	14
<u>Johnson v. State</u> , 655 So.2d 37 (Miss. 1995)	10
<u>Johnson v. State</u> , 655 So.2d 41 (Miss. 1995)	10
<u>Lanier v. State</u> , 533 So.2d 473 (Miss. 1988)	11
<u>Lanier v. State</u> , 533 So.2d 488 (Miss. 1988)	11
<u>Morgan v. State</u> , 741 So.2d 245 (Miss. 1999)	10, 12
<u>Morgan v. State</u> , 741 So.2d 246 (Miss. 1999)	10, 12
<u>Price v. Simpson</u> , 205 So.2d 642 (Miss. 1968)	10
<u>Ratcliff v. State</u> , 308 So.2d 225 (Miss. 1975)	11
<u>Ratcliff v. State</u> , 308 So.2d 227 (Miss. 1975)	11
<u>Young v. State</u> , 731 So.2d 1145 (Miss. 1999)	11
<u>Young v. State</u> , 731 So.2d 1151 (Miss. 1999)	11
<u>Youngblood v. State</u> , 759 So.2d 479 (Miss. Ct. App. 1999)	14

IV. STATEMENT OF ISSUES

The following issues are presented for review by this Court:

- I. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION TO SUPPRESS EVIDENCE.
- II. THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR DIRECTED VERDICT AS THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

V. STATEMENT OF THE CASE

On the night of September 21, 2005, the Baldwin Police Department set up a driver's license check point in Lee County. (Rec. p. 52). The appellant, Chaldrick Betts, approached the check point and slowed down, but continued through the check point without stopping. (Rec. p. 53-54). The officers identified Chaldrick Betts as the driver of the vehicle and his co-defendant, Artravis Richey, as the passenger. (Rec. p. 54).

The officers followed the car approximately one-half mile until it came to a stop. (Rec. p. 70). During the pursuit, the officers saw objects being thrown out of the window on the passenger's side of the car. (Rec. p. 61). After the car came to a stop, Betts exited the vehicle and started running. (Rec. p. 62). Chaldrick Betts ran approximately twenty-five (25) yards before stumbling where he was then arrested by the officers. (Rec. p. 66). The officer testified there was a plastic bag containing some white rock-like substance later identified as .38 grams of cocaine lying next to Betts. (Rec. p. 63). After arresting Chaldrick Betts and Artravis Richey, the officers searched the area along side the road where they had seen objects being thrown out of the passenger's side window. (Rec. p. 64-65). The officers found a brown bag containing a substance that was later identified as 7.5 grams of marijuana. (Rec. p. 65 and 93).

Chaldrick Betts and Artravis Richey were both arrested and later indicted for Possession of Cocaine greater than .10 gram, Possession of Marijuana less than 30 grams, and Felony Fleeing and Eluding a law enforcement officer. Artravis Richey pled guilty to the charges against him and later testified at Chaldrick Betts' trial. (Rec. p. 96). Artravis Richey testified that the marijuana and cocaine belonged to him and not Chaldrick Betts and that he threw the items out the window. (Rec. p. 98).

On February 13, 2007, Chaldrick Betts was tried on all three counts by a jury in the Circuit

Court of Lee County. Chaldrick Betts was found guilty of Possession of Cocaine greater than .10 grams and Felony Fleeing and Eluding on February 14, 2007. The Court declared a mistrial as to the Possession Marijuana charge and that charge was nolle prossed that same day. (Rec. p. 172). On February 15, 2007, Chaldrick Betts was sentenced to serve eight (8) years on the possession of cocaine and two (2) years to run consecutively on the felony fleeing and eluding in the custody of the Mississippi Department of Correction. (Rec. p. 178). Aggrieved by his convictions and sentences, Chaldrick Betts now appeals his case to this honorable Court.

VI. SUMMARY OF THE ARGUMENT

This case is appealed from a jury verdict of guilty of possession of cocaine greater than .10 grams and felony fleeing and eluding. The Appellant, Chaldrick Betts, now argues that the trial court erred in suppressing evidence that the two arresting officers had been terminated from the police department for misconduct involving drug cases. This evidence should have been allowed under Mississippi Rules of Evidence 404, 607 and 608. Suppressing this evidence violated Chaldrick Betts' absolute right to confront and cross-examine the witnesses called to testify against him and the Confrontation Clause of the United States Constitution and Article III of the Mississippi Constitution.

The Appellant further argues that the trial court erred in denying his motions for directed verdict. The trial record does not support the convictions of possession of cocaine and felony fleeing and eluding. As such, the trial court should have directed a verdict in favor of the Appellant. Also, the verdict of the jury was against the overwhelming weight of the evidence.

For the above mentioned reasons, the verdicts of the trial court should be reversed and remanded for a new trial.

VII. ARGUMENT AND AUTHORITIES

I. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION TO SUPPRESS EVIDENCE.

On the morning of trial, the State made an untimely motion in limine ore tenus to suppress evidence that both of the arresting officers who were to testify at trial had been terminated from the Baldwin Police Department. Over the defense's objection, the trial court granted the State's motion in limine. The court ruled that defense counsel could only ask the officers where they were currently employed, but could not ask about the reasons for their dismissals from the police department. (Rec. p. 29-32). The trial court's ruling violated the Mississippi Rules of Evidence and the Confrontation Clause of the Sixth Amendment of the United State Constitution; and therefore, this case should be reversed and remanded for a new trial.

Mississippi Rules of Evidence 404(a) states that, "evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except..... (3) Evidence of the character of a witness, as provided in Rules 607, 608 and 609." Rule 404 (a)(3) refers one to Rules 607, 608 and 609 to evaluate character evidence relating to the veracity or truthfulness of a witness. Rule 607 states that, "[t]he credibility of a witness may be attacked by any party including the party calling him."

Mississippi Rules of Evidence 608 is concerned with the character of witnesses in a trial. Mississippi Rules of Evidence 608(b) states that, "specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character

for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.” This exception allows for impeachment by specific acts which are something other than criminal convictions when the character trait of truthfulness of the witness being cross-examined is under attack.

“Impeachment is the process of discrediting a witness.” Johnson v. State, 655 So.2d 37, 41 (Miss. 1995). As stated above, “Mississippi Rules of Evidence 607 provides that any party may attack the credibility of a witness.” Id. “There are several ways to impeach a witness’ credibility including the showing of bias or prejudice of the witness or by attacking the witness’ accuracy of recalled events. It does not matter which method is used to discredit a witness as long as the impeaching material is relevant to the issue at hand.” Id. However, it is well established that a witness should not be contradicted on a collateral matter. Id. Therefore, the Court must first determine if the facts and circumstances surrounding the termination of the police officers were “collateral”.

The test for determining if an issue is collateral was set forth in Price v. Simpson, 205 So.2d 642 (Miss 1968). The Price test for determining if an issue is collateral is whether the cross-examining party would be able to prove the matter in their case-in-chief. Id. “Even if the evidence does not pass the test set forth in Price, a party has the right to contradict a witness and impeach them if in doing so, he was attempting to show bias, motive, or intent as affecting the credibility of the testimony of the witness. Johnson, at 41.

In Morgan v. State, 741 So.2d 246 (Miss. 1999), the defendant, a police officer, testified that he was a decorated police officer of good character and integrity on direct examination. The trial court allowed the State to impeach the defendant on his assertions with past allegations of police brutality. Id. at 254. The Court held that the trial court acted properly. Id.

The Confrontation Clause of the Sixth Amendment of the United States Constitution

provides, “[i]n all criminal prosecutions, the accused shall enjoy the right.... to be confronted with the witnesses against him....” U.S. Const. Amend. VI., *see also* Miss. Const. Art. III §26. This right includes the right to have his defense counsel cross-examine each witness called by the prosecution. Ratcliff v. State, 308 So.2d 225, 227 (Miss. 1975). This Court has stated the purpose of the Confrontation Clause is “to advance the accuracy of the truth determining process..... by assuring that the trier of fact has a satisfactory basis for evaluating the trust of a prior statement.” Lanier v. State, 533 So.2d 473, 488 (Miss. 1988).

Under the Confrontation Clause, the defendant may cross-examine each witness fully on every material point relating to the issues in the case, including matters going to the credibility of the witness and the weight and worth of the testimony of the witness. Young v. State, 731 So.2d 1145, 1151 (Miss 1999). There is much overlap between the Confrontation Clause and the right of cross-examination provided in the rules of evidence. However, the guarantees of the Confrontation Clause exist separate and apart from the hearsay rule.

In the case at hand, defense counsel should have been allowed to question the two police officers on the reasons they were terminated from the Baldwin Police Department. History, logic, and common sense tell us that courts and juries give great weight and credibility to the testimony of police officers. Therefore, the fact that these two officers were terminated from the police department becomes ever more important. The jury should have been allowed to weigh this evidence along with the officers testimony.

On direct, Chris Barnett, was asked the question “Your line of work?”, and he responded, “I was with the Baldwin Police Department.” (Rec. p. 52). Also, Nyle Calley was asked on direct “And you were there with which fellow officer?” and he replied, “Captain Barnett.” (Rec. p. 78). Calley’s answer implied that Chris Barnett was still a Captain in good standing and a fine upstanding member

of the police force. Rather, the truth, according to the proffer made by defense counsel, was that both officers had been terminated for hanging around with people that were dealing drugs and not arresting or selectively arresting and prosecuting these people. Why these officers were choosing to prosecute some drug dealers and not others obviously goes to their character and their prejudice against Chaldrick Betts. This information also begs the question, why the officers chose to prosecute Chaldrick Betts and Artravis Richey on the night when maybe they had not prosecuted others on similar nights.

First, as stated in Mississippi Rules of Evidence 607, the credibility of a witness may be attacked by either party. Defense counsel should have been allowed to cross-examine the officers as to the reasons behind their termination under Mississippi Rules of Evidence 608(b). The officers were terminated for inappropriate acts which go to their very character for untruthfulness and their possible prejudices. The jury should have been able to weigh the fact that these officers had chosen not to prosecute other people they had caught doing the same acts as the appellant against the officers testimony. Suppressing this evidence was not only extremely prejudicial to the appellant's case, but it also, by silence, bolstered the credibility of the officers testimony whether it deserved to be or not. Also, the officers' termination showed possible bias and motive for prosecuting Chaldrick Betts and Artravis Richey. It is very possible that these two officers knew they were in trouble for not properly performing their jobs and knew they were about to be terminated from the police force. This fact alone could have provided enough motive for the officers to have been trying to make a big felony arrest to try and impress their supervisors, to show what a good job they really were doing in drug cases, and to try to save their jobs and their livelihoods. The suppressed evidence should have been admitted under Mississippi Rules of Evidence 404, 607 and 608 and trial court erred in not doing so.

Second, the situation in this case is similar to Morgan v. State. Like the officer in Morgan,

these officers held themselves out to the jury as fine up-standing members of law enforcement. One even referred to the other as “Captain Barnett,” during testimony, which implied that Chris Barnett was still a captain in the police department. Morgan and the case at hand both involve testimony of less than stellar police officers. As the trial court in Morgan ruled and the Supreme Court affirmed, the jury is entitled to hear the entire story and not just the facts that the state would like to pick and choose to present to the jury. As such, the officers’ testimony and the surrounding facts should not have been withheld from the jury.

Finally, the suppression of the evidence by the trial court violated the Confrontation Clause of the Sixth Amendment of the United States Constitution and Article III of the Mississippi Constitution. The Appellant was not afforded the right to cross-examine and challenge the witnesses called against him. The suppression of this evidence undermined the very purpose of the Confrontation Clause. The Confrontation Clause is meant to assure and advance the jury’s accuracy in determining what the truth is by providing that the jury has a strong basis for evaluating the truth. In this case, the jury was completely kept in the dark as to the “complete” truth. The jury had no idea that both of the State’s primary witnesses had been terminated for misconduct in cases involving drug dealers and users. It cannot be forgotten, that the Appellant was ultimately convicted of a drug crime. As such, the Appellant should have been allowed to confront and cross-examine the two primary witnesses against him, and the trial court denial of this absolute right was error.

For the above listed reasons, the trial court erred in suppressing the termination of the two arresting officers and surrounding facts. Therefore, this case should be reversed and remanded for a new trial.

II. THE TRIAL COURT ERRED IN DENYING THE APPELLANT'S MOTION FOR DIRECTED VERDICT AS THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

The trial court erred in denying the Appellant's motion for directed verdict. The jury's verdict of guilty of possession of cocaine greater than .10 gram and felony fleeing and eluding was against the overwhelming weight of the evidence. Therefore, the jury's verdict of guilty should be reversed and remanded.

In determining whether a verdict is against the overwhelming weight of the evidence, the appellate Court must review all evidence in a light most consistent with the jury verdict. Youngblood v. State, 759 So.2d 479 (Miss. Ct. App. 2000). The Court "must accept as true the evidence presented as supportive of the verdict, and will disturb a jury verdict only when convinced that the circuit court has abused its discretion in failing to grant a new trial or if the final result will result in an unconscionable injustice." Ford v. State, 753 So.2d 489 (Miss. Ct. App. 1999).

The verdict of the jury was against the overwhelming weight of the evidence. No reasonable juror could have found the Appellant guilty as the State failed to meet its burdens of proof beyond a reasonable doubt. First, as to the Appellant's conviction for possession of cocaine greater than .10 gram. The co-defendant, Artravis Richey, had previously pled guilty and admitted to possessing both the cocaine and the marijuana. At trial, Artravis Richey also testified that both the cocaine and the marijuana belonged to him alone and not to Chaldrick Betts. (Rec. p. 98). He also testified that he was the one who threw the drugs out of the passenger's side window. (Rec. p. 99). His testimony at trial was that Chaldrick Betts did not own or possess any of the drugs found that night. Artravis Richey was the only other person inside the car that night who actually knew what was going on and he had nothing to gain by claiming the drugs. For these reasons, the jury verdict was against the

overwhelming weight of the evidence and the trial court should have directed a verdict for Chaldrick Betts on the possession of cocaine charge.

Second, the trial court erred in denying Betts' motion for directed verdict as to his conviction of felony fleeing and eluding a law enforcement officer. As stated in Jury Instruction C9, a felony fleeing and eluding conviction requires the jury to find, that Chaldrick Betts operated his vehicle in such a manner as to indicate reckless or willful disregard for the safety of persons or property, and/or manifest extreme indifference to the value of human life. The record is completely void of any testimony that would show that Chaldrick Betts was operating his vehicle in a manner that would rise to the level of "reckless or willful disregard" or "extreme indifference to the value of human life."

Officer Chris Barnett testified that the entire pursuit from the road block to the point where Chaldrick Betts' car stopped was only approximately one-half mile. (Rec. p. 70). Further, officer Nyle Calley testified that Chaldrick Betts had slowed his vehicle down to fifteen (15) to twenty (20) miles per hour, as he was coming through the road block. (Rec. p. 78). Artravis Richey also testified that the car was having engine problems and was flooding out. He testified that the vehicle was not running correctly and would not run over fifty-five (55) miles per hour. (Rec. p. 100). Finally, there is no evidence in the record to show that any other cars or persons were involved in the pursuit. There is not even any evidence that there was property nearby. The officers themselves testified that there was only a big open cleared off field where the car stopped. (Rec. p. 63-64). The record simply does not support a felony fleeing and eluding conviction. At most, the record might perhaps support a misdemeanor conviction of fleeing and eluding a law enforcement officer. As such, the trial court erred in not directing a verdict for Betts as to the felony fleeing and eluding charge. For these reasons discussed in this section, this case should be reversed and remanded for a new trial.

VIII. CONCLUSION

For the reasons specifically set forth under the heading *Arguments and Authorities*, the Appellant asserts that the judgments of the Circuit Court of Lee County should be reversed and remanded for a new trial.

CERTIFICATE OF SERVICE

I, **Lori Nail Basham**, attorney for Appellant, hereby certify that I have this day served a true and correct copy of the above and foregoing Appellant's Brief on the following by placing a copy of same in the United States Mail, postage prepaid, first class and addressed as follows:

Honorable Jim Hood
Post Office Box 220
Jackson, Mississippi 39205

Mr. David Daniels, Esquire
Second Floor
Lee County Justice Center
Tupelo, Mississippi 38801

Mr. Dennis Farris, Esquire
Second Floor
Lee County Justice Center
Tupelo, Mississippi 38801

Honorable Jim Pounds
Second Floor
Lee County Justice Center
Tupelo, Mississippi 38801

Mr. Chalrick Betts
MDOC# 109891
Mississippi State Prison, Unit 32E
Parchmen, Mississippi 38738

This the 5th day of February, 2008.


LORI NAIL BASHAM

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

CHALDRICK BETTS

APPELLANT

V.

CASE NO. 2007-KA-01283-COA

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF FILING

This is to certify that I, **Lori Nail Basham**, Attorney for Appellant, have this day filed by first class mail, the original, three copies, and an electronic disk of the above and foregoing Appellant's Brief with the Court of Appeals for the State of Mississippi, at the following address:

Clerk's Office
Post Office Box 249
Jackson, Mississippi 39205

This the 5 day of February, 2008.



LORI NAIL BASHAM,
Attorney for Chaldrick Betts
Post Office Box 1726
Fulton, Mississippi 38843
Telephone: 662-862-6633
Facsimile: 662-862-7633