IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

WILLIAM PRESLEY BROWN, II — APPELLANT

V. — NO. 2007-KA-01330-COA

STATE OF MISSISSIPPI — APPELLEE

REPLY BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS
Justin T. Cook, MS Bar No. [redacted]
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200

Counsel for William Presley Brown, II

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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. William Presley Brown, II, Appellant
3. Honorable G. Gilmore Martin, District Attorney
4. Honorable Isadore W. Patrick, Circuit Court Judge

This the 4th day of August, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

Justin T. Cook
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39205
Telephone: 601-576-4200

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ISSUE ONE: STANDING IS NOT A SEPARATE CONCEPT IN FOURTH AMENDMENT ANALYSIS. THE STATE MISAPPLIES STANDING AS A THRESHOLD QUESTION.

The United States Supreme Court has addressed the issue of standing in Fourth Amendment cases;

> [T]he question necessarily arises whether it serves any useful analytical purpose to consider this principle [that Fourth Amendment rights may not be vicariously asserted] a matter of standing, distinct from the merits of a defendant's Fourth Amendment claim. . . [T]he type of standing requirement discussed in [prior cases] . . . is more properly subsumed under substantive Fourth Amendment doctrine . . . . The inquiry under either approach is the same. But we think the better analysis forthrightly focuses on the extent of a particular defendant's rights under the Fourth Amendment, rather than on any theoretically separate, but invariably intertwined concept of standing.

Rakas v. Illinois, 439 U.S. 128, 138-39 (1978).

The practical effect of ***Rakas***, was that standing is no longer the issue that the United States Supreme Court wishes lower court's to resolve. Rather, the relevant inquiry is now, were the defendant's Fourth Amendment rights – as distinguished from someone else's – violated by government action?

The fundamental question is simple: whether "there is some meaningful interference with [the defendant's] possessory interest" in the seized property.[1] *See* ***United States v. Jacobsen***, 466 U.S. 109, 113 (1984). *See also,* ***Minnesota v. Carter***, 525 U.S. 83, 87 (1998)(criticizing a state court for analyzing the facts of the case "under the rubric of 'standing' doctrine, an analysis which this Court expressly rejected 20 years ago in ***Rakas***").

Therefore, the Appellee's assertion that the Appellant did not have standing is misplaced as a threshold issue.

ISSUE TWO: THE APPELLEE'S ASSERTIONS FAILS TO ADEQUATELY ANALYZE THE PARTICULARS OF THE APPELLANT'S FOURTH AMENDMENT VIOLATION; MOREOVER, THE SEIZURE OF APPELLANT'S VEHICLE DOES NOT FALL UNDER ANY OF THE APPELLEE'S ALLEGED EXCEPTIONS, BECAUSE IT IS NOT SUPPORTED BY PROBABLE CAUSE.

Nowhere in its brief does the Appellee contend that the Appellant's vehicle was not seized.

The Appellee argues that the police had probable cause when they seized the Appellant's vehicle. The Appellee asserts that because there was blood visible in the truck, there was probable cause. This is, however, a misstatement. None of the officers testified that they knew it was blood. There was merely testimony that it appeared to be blood. No test was done before seizing the Appellant's vehicle.

While the State argues it ***Edlin v. State***, 523 So. 2d 42 (Miss. 1988) as controlling, ***Edlin*** is clearly distinguishable from the case at bar. In ***Edlin*** the court found that probable cause existed to believe that the vehicle in question was involved in the particular crime that they were

1. The Appellant contends that there was a meaningful interference with the Appellant's possessory interest in his vehicle, that remains unaffected by whose name the title was in.

investigating. In ***Edlin***, keys were found at the scene of the crime which led investigators to the suspect and, eventually, the vehicle. The Appellant respectfully contends that the amount of probable cause present in ***Edlin*** is far more substantial than present in the case *sub judice*. Unlike in ***Edlin***, in the instant case, at the time of the unlawful seizure, there was no suspect in the crime. In fact, even the identity of the victim was unknown. Furthermore, there is no indication that there was any alteration done to the Appellant's vehicle, unlike the vehicle in ***Edlin***.

The Appellee contends that the automobile exception applies in the instant case. The Appellee fails, however, to mention that the automobile exception requires probable cause to justify the warrantless search or seizure of a motor vehicle. *See* ***Florida v. White***, 526 U.S. 559 (1999)(holding that officers may seize an automobile parked in a public place when they have probable cause to believe the vehicle itself constitutes forfeitable contraband under state law).

Again, there is not sufficient evidence to show that the seizure of the Appellant's truck was supported by probable cause. Officer Brown's only articulation of probable cause was that police officers saw what they believed to be blood on the tailgate of the vehicle. (Supp. T 89). Other members of the Vicksburg Police Department openly admitted on the stand that the only basis for the seizure of the vehicle was the suspicion that there was blood on the tailgate. (T. 148). However, "bare," "mere," or even "reasonable suspicion" is not sufficient to rise to the level of probable cause. ***Brinegar v. United States,*** 388 U.S. 132, 175 (1949). The Officer's suspicion is not enough to satisfy the requirement of probable cause.

Therefore, under either the plain view or automobile exception, the seizure of the Appellant's vehicle was not supported by probable cause.

CERTIFICATE OF SERVICE

I, Justin T. Cook, Counsel for William Presley Brown, II, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **REPLY BRIEF OF THE APPELLANT** to the following:

Honorable Isadore W. Patrick
Circuit Court Judge
Post Office Box 33
Vicksburg, MS 39181

Honorable G. Gilmore Martin
District Attorney, District 9
Post Office Box 648
Vicksburg, MS 39181

Honorable Jim Hood
Attorney General
Post Office Box 220
Jackson, MS 39205-0220

This the 4th day of August, 2008.

Justin T. Cook
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
301 North Lamar Street, Suite 210
Jackson, Mississippi 39201
Telephone: 601-576-4200