

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

2007-KA-01242

1342

JASPER SONES

VS.

STATE OF MISSISSIPPI

FILED

APPELLANT

JUL 09 2008

Office of the Clerk
Supreme Court
Court of Appeals

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

APPELLANTS BRIEF

JESSE BURGE GOODSSELL
MISSISSIPPI BAR [REDACTED]
515 COURT STREET
JACKSON, MS 39201
(601) 353-8888

APPELLANTS BRIEF

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS
2007-KA-01242-COA

1312

JASPER SONES

APPELLANT

VS.

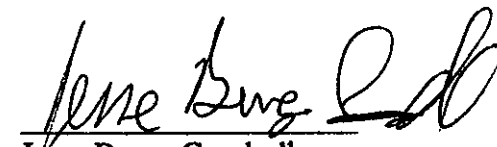
STATE OF MISSISSIPPI

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 the Supreme Court and/or the Justices of the Court of Appeals may evaluate possible disqualifications or recusal:

- 1.) Jasper Sones
- 2.) Brent Young
- 3.) Jesse Burge Goodsell
- 4.) D. Gill Baker
- 5.) Forrest Allgood
- 6.) Patricia Faver
- 6.) Lee J. Howard


Jesse Burge Goodsell

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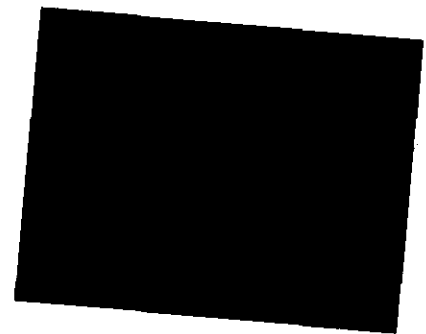
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STATEMENT OF THE ISSUES

- 1.) DID THE OKTIBBEHA CIRCUIT COURT ERR IN FINDING THAT JASPER SONES DID NOT HAVE STANDING TO CHALLENGE THE LEGALITY OF THE SEARCH OF THE PREMISES LOCATED AT 1284 COUNTY LAKE ROAD STARKVILLE MISSISSIPPI?
- 2.) DID THE CIRCUIT COURT OF OKTIBBEHA COUNTY ERR BY USING THE WRONG ANALYSIS WHEN CONSIDERING THE LEGALITY OF TH SEARCH AS THE STATE NEVER ENTERED THE AFFIDAVIT APPLYING FOR THE SEARCH WARRANT AND DID NOT ENTER THE SEARCH WARRANT ITSELF INTO EVIDENCE MAKING THE SEARCH TO CONSIDERED BEFORE THE COURT A WARRANTLESS SEARCH.
- 3.) DID THE COURT ERR IN FINDING SUFFICIENT CIRCUMSTANCES FOR THE SEARCH OF THE RESIDENCE LOCATED AT 1248 COUNTY LAKE ROAD, STARKVILLE, MISSISSIPPI.



STATEMENT OF THE CASE

On the morning of February 28, 2001, a Mississippi Bureau of Narcotics agent (the agent) named Brent Young was at the grand opening of the Wal-Mart Supercenter in Starkville, Mississippi. The agent was on duty and was present at the Wal-Mart to speak with loss prevention personnel concerning the purchase of precursor materials for the manufacture of methamphetamine. He was attired in a shirt that identified him as an agent for the Mississippi Bureau of Narcotics. While speaking to Wal-Mart personnel in the pharmacy department he observed a man select two boxes of the cold medication Sudafed. The agent made eye contact with the man. In the agent's opinion this made the man nervous and the man knocked over some Sudafed boxes on the shelf. The agent later observed the man purchase the two boxes of Sudafed, a 50 pack of book matches, and two ash trays. The man exited the store, got into a silver/gray pick-up that was driven by another man and the two men drove away. The pick-up truck had a camper shell on its bed and a marking that read "S & S Construction" on its back. The agent said that he could observe several blue plastic bags in the back of the truck as it drove away.

The agent followed the truck from the parking lot of the Wal-Mart to the 4-County Electric Company. The truck stopped in the Electric Company parking lot. The agent said he did not observe anyone exit the vehicle. (The receipt for the power.) The vehicle remained there for approximately 15 minutes. The agent lost contact with the vehicle for about 20 minutes and then spotted it at a Chevron Station where he observed the two men purchasing ice. (And beer) The truck left the service station and went to a residence in Starkville.

SUMMARY OF THE ARGUMENT

- 1.) **DID THE OKTIBBEHA COUNTY CIRCUIT COURT ERRED IN FINDING THAT JASPER SONES DID NOT HAVE STANDING TO CHALLENGE THE LEGALITY OF THE SEARCH OF THE PREMISES LOCATED AT 1284 COUNTY LAKE ROAD, STARKVILLE, MISSISSIPPI.**

- 2.) **DID THE CIRCUIT COURT OF OKTIBBEHA COUNTY USED THE WRONG ANALISYS WHEN CONSIDERING THE LEGALITY OF THE SEACH AS THE STATE NEVER ENTERED THE AFFADAVIT APPLYING FOR THE SEARCH WARRANT AND/OR THE SEARCH WARRANT ITSELF INTO EVIDENCE AND WHAT WAS BEFORE THE COURT WAS A WARRANTLESS SEARCH.**

- 3.) **DID THE COURT ERRED IN FINDING SUFFICIENT PROBABLE CAUSE FOR THE SEARCH OF THE RESIDENCE LOCATED AT 1248 COUNTY LAKE ROAD, STARKVILLE**

ARGUMENT

1.) THE OKTIBBEHA COUNTY CIRCUIT COURT ERRED IN FINDING THAT JASPER SONES DID NOT HAVE STANDING TO CHALLENGE THE LEGALITY OF THE SEARCH OF THE PREMISES LOCATED AT 1284 COUNTY LAKE ROAD, STARKVILLE, MISSISSIPPI.

The issue of standing to challenge a search is an issue at law to be decided by the Court. Powell v. State 824 So. 2d 661 at 663 (Miss App.2002) Peterson v. State 671 So 2d 647 at 652 (Miss. 1996).

This Court in Powell quoting Rakas v Illinois stated: "The issue of standing is resolved through two inquiries: did the defendant have a subjective expectation of privacy in the place searched; from society's perspective, was an expectation reasonable?" Rakas v. Illinois, 439 U.S. 128 at 151 (1978). Powell at 663. "The court stated that the ultimate question is not whether a defendant has property rights in the area of search, but whether that defendant has a reasonable expectation of privacy in the invaded place. Rakas at 143, Powell at 663."

The evidence presented at the Suppression Hearing was that Jasper Sones,(Jasper), had contracted to renovate the house located at 1284 County Lake Road Starkville, Mississippi. (T. page 53,54). The owner of the premises, Keith Huffman, wanted Jasper to get the house ready to be a rental property. (T.398) The house required a complete refurbishing. (T. 53) Jasper had possession of the property through permission of the owner, Keith Huffman.(T. 53) There was no dispute at the suppression hearing that Jasper and his assistants were inside the house to renovate the house. At the suppression hearing, Agent Brent Young testified that when they entered the house the occupants were refinishing the flooring on the first floor of the house.(T. 31) The

Agent at the time of the search observed “duffle bags with clothing and beds in the basement appeared that they were actually residing at the residence while they were working on it.” (T. 38)

The trial held from the suppression hearing that Jasper Sones, the Defendant, did not have standing to contest the search because: “The Court having considered same finds, that defendant was occupying a residence which was under construction, and further that he had no interest in the property whatsoever, the property belonging to another person by whom the defendant had been hired to renovate said premises. The court is therefore of the opinion that defendant has no protected fourth amendment interests and set property and therefore has no expectation of privacy in same.” R 1)

In *Minnesota v. Olson* 495 U. S. 91, at 96 the Court stated that a place does not have to be ones home in order to have a legitimate expectation of privacy. The Court further stated: “We need go no further than to conclude, as we do, that Olson’s status as an overnight guest alone is enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable.” *Id.* at 96-97.

The Court, in its ruling denying the Motion to Suppress found that Jasper Sones occupied the property, but because he had no propriety interest in the property, he had no fourth amendment interest. This is an incorrect legal standard. The correct legal standard is whether or not Jasper Sones had a reasonable expectation of privacy that society is prepared to recognize as reasonable. If a Trial Court uses the wrong legal standard, when determining the facts then this is manifest error and the ruling of the Court should be overturned. McFarlin v. State 883 So. 2d 594 at 597 (Miss App, 2004) states “in determining whether evidence should be suppressed a trial court’s finding of fact are not disturbed on appeal unless the trial judge applied an incorrect

legal standard, committed manifest error, or made a decision contrary to the overwhelming weight of the evidence. Taylor v State, 733 So. 2d. 251, at 255 (Mississippi 1999).

2.) **THE CIRCUIT COURT OF OKTIBBEHA COUNTY USED THE WRONG ANALYSIS WHEN CONSIDERING THE LEGALITY OF THE SEARCH AS THE STATE NEVER ENTERED THE AFFIDAVIT APPLYING FOR THE SEARCH WARRANT AND/OR THE SEARCH WARRANT ITSELF INTO EVIDENCE AND WHAT WAS BEFORE THE COURT WAS A WARRANTLESS SEARCH.**

The State never entered the AFFIDAVIT made by Agent Young into evidence, nor did it enter the Search warrant itself into evidence either at the suppression hearing held or at the trial of the matter. The issue before the Court was not whether there was facts constituting sufficient probable cause for a neutral magistrate to issue a search warrant but whether the circumstances of the search constituted an exception to the requirement for a search warrant.

The facts presented before the Court were as follows:

- 1.) A Mississippi Bureau of Narcotics agent observed a man select and buy two boxes of Sudafed, along with a 50 pack of book matches, and two ashtrays
- 2.) The man left the store got into a marked construction company work truck that left the store parking lot driven by another man.
- 3.) The agent then observed blue plastic bags in the back of the truck;
- 4.) The truck stopped at an electric utility office for about 15 minutes
- 5.) The truck stopped at a service station where the occupants were seen purchasing ice;
- 6.) The truck proceeded to and parked at a residence in Starkville and the occupants went

inside the residence;

- 7.) That the agent and other law enforcement agents watched the residence for about 7 hours;
- 8.) That the men inside the house came outside and smoked cigarettes;
- 9.) That a vehicle twice came and left the residence.

This Court has stated: "Search is conducted outside the judicial process, without the issuance of a warrant by a neutral and detached magistrate or judge, have long since been seen as per se unreasonable and in violation of the fourth amendment, subject to only a few specifically established and well delineated as the exceptions." Ray v. State, 798 So. 2d 579, at 582 (Miss App.2001) (citing Katz v United States, 389 US 347, at 356 (1967)). "The burden is on the officers show that the search comes within one of the exceptions" Jackson v. State, 18 So.2d 827, 829 (Miss. 1982). "If a search is deemed unreasonable, then all evidence seized during that search is inadmissible for the jury or the court to consider as evidence of the defendants guilt." (citing Mapp v. Ohio 367 US 643 (1961); Joyce v. State, 87 So.2d 92 (Miss 1956).

There was no search warrant before the Court for it to consider. This, as far as this Court was concerned was a warrantless search. There were no exceptions to the warrant requirement, no emergency nor any exergent circumstances. The State failed in its burden to show a reasonable search of the premises located at 1248 County Lake Road, Starkville, Miss..

- 3.) **THE COURT ERRED IN FINDING SUFFICIENT PROBABLE CAUSE FOR THE SEARCH OF THE RESIDENCE LOCATED AT 1248 COUNTY LAKE ROAD, STARKVILLE**

Jasper Sones moved the court to suppress the evidence obtained from a search of the residence located at blank road in Starkville Mississippi. The state produced a copy of the search warrant and affidavit, but did not move the documents into evidence. Without the search warrant and the supporting affidavit before the court, the trial court would not be able to determine if the magistrate that executed the search warrant had a substantial basis to find probable cause. The trial court would also be unable to determine if the warrant was specific enough as to the location of the search and exactly what items the search was to find.

The standard of review for a search warrant is found in this Court's ruling in "Savell v. State" 928 So 2d 961 at 971 (Miss App. 2006). Savell states the following: "The United States Supreme Court has established a "totality of the circumstances" standard for the determination of the existence of probable cause for the issuance of a warrant. Illinois v Gates, 462 U.S. 213 at 233, 103 S. CT. 2317, 76 L. Ed 2d. 527 (1983); see Lee v. State, 435 So2d.674, 676 (Miss. 1983) (adopting "totality of the circumstances." standard in Mississippi). This simply requires a magistrate to make "a practical commonsense decision whether, given all the circumstances set forth in the affidavit for him, including the veracity and bases of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Gates "reviewing a magistrate's issuance of a search for on appeal does not require that we make a de novo determination of probable cause; therefore, I standard of review is to determine whether there was a substantial basis for the magistrate at finding probable cause."

Testimony at the suppression hearing that the facts that were before the magistrate can be summarized as follows:

- 1.) A Mississippi Bureau of Narcotics agent observed a man select and buy two boxes of

Sudafed, along with a 50 pack of book matches, and two ashtrays

- 2.) The man left the store got into a marked construction company work truck that left the store parking lot driven by another man.
- 3.) The agent then observed blue plastic bags in the back of the truck;
- 4.) The truck stopped at an electric utility office for about 15 minutes
- 5.) The truck stopped at a service station where the occupants were seen purchasing ice;
- 6.) The truck proceeded to and parked at a residence in Starkville and the occupants went inside the residence;
- 7.) That the agent and other law enforcement agents watched the residence for about 7 hours;
- 8.) That the men inside the house came outside and smoked cigarettes;
- 9.) That a vehicle twice came and left the residence.

Because the Warrant was never admitted into evidence and is not part of the record this Court cannot determine what the facts that were presented to the magistrate were or who the magistrate was for that matter. The common sense ANALYSIS of the above facts would not rise to a level where there was probable criminal activity. These facts would indicate that a number of law officers spent a lot of time observing a house where there was no to suspect criminal activity.

CONCLUSION

The Trial Court erred in not suppressing the evidence submitted and trial and the case against the defendant should have been dismissed.

CERTIFICATE OF SERVICE

I, , do hereby certify that I have this date:

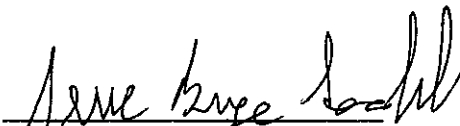
_____ mailed by United States Mail, postage prepaid;

_____ faxed to;

XXX hand delivered;

a copy of the following Brief to Attorney General Jim Hood. Mississippi.

Certified this the 28th day of July, 2008.


J. B. Goodsell

J. B. Goodsell
Attorney at Law
515 Court St.
P. O. Box 2928
Jackson, MS 39201
Tel.(601) 353-8888
Fax (601) 944-0058
MS Bar No. [REDACTED]

CERTIFICATE OF SERVICE

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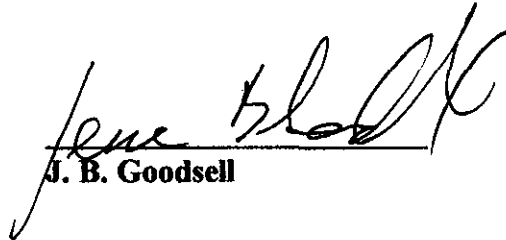
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_____ hand delivered;

**a copy of the following Brief to Circuit Judge Lee J. Howard at P.O. Box 1344 Starkville
Ms. 39760**

Certified this the 28th day of July, 2008.


J. B. Goodsell

**J. B. Goodsell
Attorney at Law
515 Court St.
P. O. Box 2928
Jackson, MS 39201
Tel.(601) 353-8888
Fax (601) 944-0058
MS Bar No. [REDACTED]**