

**NORBERTO R. MORALES a/k/a NORBERTO RENTERIA
MORALES, a/k/a JOSE V. MORALES**

APPELLANT

FILED

VS.

MAR 03 2008

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

Appeal from Circuit Court of Newton County, Mississippi

BRIEF FOR APPELLANT

Edmund J. Phillips, Jr.
Attorney at Law
P. O. Box 178
Newton, MS 39345
Telephone 601-683-3387
Facsimile 601-683-3110

COUNSEL FOR APPELLANT

**NORBERTO R. MORALES a/k/a NORBERTO RENTERIA
MORALES, a/k/a JOSE V. MORALES**

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

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


**Honorable Mark Duncan
District Attorney
P.O. Box 603
Philadelphia, MS 39350**

**Honorable Marcus D. Gordon
Circuit Court Judge
P.O. Box 220
Decatur, MS 39327**

**Honorable Jim Hood
Attorney General of MS
P.O. Box 220
Jackson, MS 39205**

**Norberto R. Morales
APPELLANT**

DATED, this the 3^d day of March, 2008.


EDMUND J. PHILLIPS, JR.
Attorney for Appellant

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	2-4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

Hester v. State, 602 So. 2d 869 (Miss. 1992).	Page 2
Rhone v. State, 254 So. 2d 750, 754 (Miss. 1971);	Page 4
Martin v. State, 854 So. 2d 1004, 1006 (Miss. 2003).	Page 4
Signer v. State, 536 So. 2d 10, 12 (Miss. 1988).	Page 3
Young v. State, 451 So. 2d. 208, 210 (Miss. 1984);	Page 2

- 2) The Court erred in Denying Appellant's Motion to Suppress His Incriminating Statement.
- 3) The Court Erred in Denying Appellant's Motion to Suppress His Incriminating Statement.

STATEMENT OF THE CASE

Norberto R. Morales, a/k/a Norberto Renteria Morales, a/k/a Jose V. Morales appeals his conviction from the Circuit Court of Newton County, Mississippi of Possession of More Than Five Kilograms of Marijuana and a sentence of twenty-eight (28) years in the custody of the Mississippi Department of Corrections and fine of Fifty Thousand Dollars (\$50,000.00) and all costs of Court.

Pertinent facts will be referred to in the argument.

SUMMARY OF THE ARGUMENT

1. An accused is entitled to a jury instruction which gives his theory of the case, if the instruction has any during voir dire.
2. Attorneys may not provide jurors explanations of the law governing issues in the case being tried.
3. For an incriminating statement by an accused to be admissible into evidence, the prosecutor must prove beyond a reasonable doubt that it was voluntarily made.

THE COURT ERRED IN DENYING JURY INSTRUCTION D-7

The trial Court denied jury instruction D-7 which read as follows (c.p. 26):

The Court instructs the jury that if you find from the evidence that someone other than the defendant, exercised conscious control over the substances, or if you have a reasonable doubt that Numberto Morales exercised control over the substances, then you must vote “not guilty.”

This subject matter had been injected into the trial during voir dire (T-14) when the prosecutor stated to the jury panel:

Q. Do you understand that it's - - the crime is that of possession, not necessarily ownership? You know, you don't get title to drugs like you do a car or the deed to a house, or something like that, but it's simply a crime of possession.

An accused is entitled to a jury instruction which gives his theory of the case *Young v. State*, 451 So. 2d. 208, 210 (Miss. 1984); *Hester v. State*, 602 So. 2d 869 (Miss. 1992).

To refuse to grant a Defendant's proffered instruction is reversible error where the instruction has an evidentiary basis and properly states the law.

Appellant presented no evidence. The State's evidence showed that he was driving a vehicle common carrier containing contraband marijuana. The question of whether in driving the vehicle he exercised control over its contents was the only issue presented to the jury. This instruction required that the State prove control beyond a

II.

IN PROVIDING DURING VOIR DIRE, THE JURY PANEL HIS UNDERSTANDING OF THE LAW DEFINING POSSESSION OF CONTRABAND NARCOTICS, THE PROSECUTOR VIOLATED UCCC 3.05 AND 3.07

During voir dire, the prosecutor stated to the jury panel (T-14):

Q. Do you understand that it's - - the crime is that of possession, not necessarily ownership? You know, you don't get title to drugs like you do a car or the deed to a house, or something like that, but it's simply a crime of possession.

Attorneys' giving an opinion on the law or arguing the law during voir dire is prohibited by URCCC 3.05. Instruction to juries on the law is permitted only after the conclusion of testimony under the format prescribed by URCCC 3.07 in which the instructions are approved by and read by the Court. The prosecutor thus violated these rules of Court by instructing the jurors on the law before any evidence had been introduced.

Although Appellant failed to object, the reviewing Court may notice this as plain error. *Signer v. State*, 536 So. 2d 10, 12 (Miss. 1988).

The verdict should be overturned.

III.

THE COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS HIS INCRIMINATING STATEMENT

Appellant objected to the introduction of his incriminating statement and moved

admissibility (T-37-69) and denied the motion to suppress.

Appellant testified during the hearing (T-63):

- Q. And after they read you those rights, did anyone tell you anything?
- A. Yes, sir. Uh - - the officer - - uh - - Mark Spence, he - - ugh - - he asked me what was in - - what was in those boxes, and I said - - uh - - what boxes? And he said, we can either do it the easy way or the hard way, and I'm going to ask you again, what's in the boxes? And I said - - uh - - marijuana, and he goes, how many pounds? How much? He said - - I said - - uh - - two thousand pounds.
- Q. Okay. Uh - - when - - when he asked you the easy way or the hard way, did you feel intimidated by that?
- A. Yes, sir, because he got in front of me.

Appellant accepted as a threat of physical violence the statement of the law enforcement officer that “we can either do it the easy way or the hard way” and made his statement.

The prosecution has the burden of proving beyond a reasonable doubt that a confession or incriminating statement is voluntary. *Rhone v. State*, 254 So. 2d 750, 754 (Miss. 1971); *Martin v. State*, 854 So. 2d 1004, 1006 (Miss. 2003).

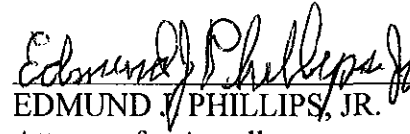
The law enforcement officer's statement reasonably could have been understood as a threat to use violence on Appellant to extract a confession.

The denial of the Appellant's motion to suppress was error.

The verdict should be overturned.

The verdict should be overturned.

RESPECTFULLY SUBMITTED,

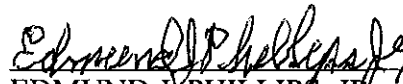
A handwritten signature in cursive script, reading "Edmund J. Phillips, Jr.", is written over a horizontal line.

EDMUND J. PHILLIPS, JR.

Attorney for Appellant

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, MS 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.

DATED: March 3, 2008.


EDMUND J. PHILLIPS, JR.
Attorney for Appellant