Case 2008-CA-01446-COA

IN THE
COURT OF APPEALS
THE STATE OF MISSISSIPPI

BRIAN YOUNG,

Plaintiff-Appellant,

-vs-

STATE OF MISSISSIPPI,

Defendant-Appellee.

Appeal from the Circuit Court in and for Jackson County, Mississippi

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REPLY BRIEF OF APPELLANT

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REPLY STATEMENT OF THE CASE

A full recitation of the case has been presented to this Court through the narrative of the Appellant's original Brief and through the Appellee's Brief. The State, though, mis-states some of the facts of the case, misstatements which need to be corrected in the record.

First of all, the State of Mississippi repeatedly suggests that Mr. Young's Post Conviction Relief motion was never properly verified. Such statements to this Court are far from the truth. Mr. Young's filing with the state supreme court included attached affidavits regarding the allegations and constitutional challenges advocated in the post conviction petition. While perhaps not uniformly found in any one page or attachment, Mr. Young, an incarcerated prisoner, has complied with the requirement to verify his post conviction relief petition. (See, Exhibit A attached hereto, additional copies of affidavits previously filed in this matter.)

Secondly, the State advocates that Mr. Young's motion "includes issues never reviewed by the Supreme Court in Young's Motion to Proceed in the Trial court. " The State is simply wrong.

The issues raised in Mr. Young's post conviction motion, as presented to the state supreme court in advance as required under state law, remain: (a) issues related to Mr. Young's constitutional right to a speedy indictment and then a speedy trial, (b) issues related to Mr. Young's constitutional right to effective assistance of counsel, and (c) issues related to an evidentiary hearing. And contrary to the express statement of the Appellee that no affidavits were filed in support of Mr. Young's claims of ineffective assistance of counsel, Mr. Young has, in fact, filed affidavits and other supporting documents regarding this issue, as reflected in the record and in the record excerpts filed in this appeal. Claiming that these matters are unverified

or unsupported does not make it so, and the State is urged to simply review the record and the docket.

ARGUMENT AND STANDARDS OF REVIEW

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR POST CONVICTION RELIEF BASED UPON THE ABRIDGMENT OF HIS CONSTITUTIONAL RIGHT TO A FAST AND SPEEDY TRIAL.

The Appellee, the State of Mississippi, directs its response to the first assigned error on appeal based on the concept of res judicata. Believing that the issue is simply one of speedy trial, the State argues that the issue was definitively adjudicated by the state Supreme Court on direct appeal.

Appellee fails to understand the issue and the matter raised in both Mr. Young's post conviction filing and this appeal.

The issue is two-fold; it is one of reviewing the extraordinarily long preindictment detention and the time between indictment and trial when Mr. Young's liberty was limited by the State. The State lumps both together as a speedy trial issue addressed by the courts in direct review. The issue raised is more nuanced.

Preindictment Delay

Horribly contrary to our sense of justice and due process, Mr. Young was arrested on July 5, 2000, placed in jail, and essentially forgotten. He was deprived of his freedom for 366 days without the benefit of an indictment, without the benefit of confronting his accusers, and without

the benefit of due process. *See*, Caston v. State, 823 So.2d 473 (Miss., 2002) These 366 days are not viewed in light of any "bright line" speedy trial rules nor concepts but rather, as the Supreme Court stated in Beckwith v. State, 707 So.2d 547 (Miss., 1997), the time is reviewed by a due process analysis and an analysis of fundamental fairness. *Also see*, United States v. MacDonald, 456 U.S. 1, 7, 102 S.Ct. 1497, 1501, 71 L.Ed.2d 696 (1982)

Separate and apart from the speedy trial issue discussed by the State, the question of a violation of due process, or a fundamental unfairness, in keeping the Appellant in a highly restrictive jail cell for over one year without the benefit of an indictment, is the question of constitutional importance which is the standard for any collateral, post conviction review.

The Supreme Court of the United States has established a two-prong test for establishing when a due process violation has occurred. In United States v. Marion, 404 U.S. 307, 324, 92 S.Ct. 455, 465, 30 L.Ed.2d 468 (1971) and United States v. Lovasco, 431 U.S. 783, 795-96, 97 S.Ct. 2044, 2051, 52 L.Ed.2d 752 (1977) the Supreme Court held that the defendant must show that (1) the preindictment delay caused actual prejudice to the defendant, and (2) such delay was an intentional device used by the government to obtain a tactical advantage over the accused. See, United States v. Wehling, 676 F.2d 1053, 1059 (5th Cir.1982). To establish that actual prejudice has occurred, certain factors are to be considered in evaluating the effect of delay on a due process claim. United States v. Shaw, 555 F.2d 1295 (5th Cir.1977) According to Shaw, "due process analysis must focus on factors such as the length of the delay, the reason for the delay and the prejudice which the delay may have caused the accused."" *Id.* at 1299. Hooker v. State, 516 So.2d 1349, 1351 (Miss.1987). The Mississippi Supreme Court reaffirmed this two-prong test in Beckwith, 707 So.2d at 569.

Appellant asserts under the first prong that the preindictment delay prejudiced him. Among other things, memories are dimmed with time, and many witnesses are either dead, re-located, or no longer available to testify. Physical evidence could be degraded as well. Finally, depriving an individual of his liberty rights for over one year must give some *per se* definition to prejudice. *See*, Rumsfeld v. Padilla, 542 U.S. 426 (2004)

As to the second prong of the test, Appellant asserts that the prosecution delay was not based on any legitimate investigative need nor was there any new evidence. Clearly, just the opposite is present in Detective Sheila Jenkins testimony, when she prepared and filed an affidavit in support of the Appellant's arrest. Finally, every day that Mr. Young spent in preindictment detention gave a tactical advantage to the prosecution. These twelve months, 366 days, wore Mr. Young down. He was figuratively beaten by having his liberty taken away. He was restrained from freedom, an act that common sense and historical experiences support as assisting only the State.

Post-indictment Delay to Trial

The well-established rules of speedy trial protections only apply to those periods of time when a defendant is charged with an offense. Beckwith v. State, 707 So.2d 547 (Miss.1997). Mr. Young was finally indicted, charged with the offense of murder, on July 6, 2001 (CP-4). While there were several requests for discovery after the indictment, no trial of the Appellant occurred until April 8, 2002.

Mr. Young was denied the right to a speedy trial because the one-year delay between his arrest and his indictment was both presumptively and actually prejudicial. A defendant's right to

a speedy trial is guaranteed by the Sixth and Fourteenth amendments to the United States Constitution and under Article 3, Section 26 of the Mississippi Constitution of 1890. This right must be secured by more than just written constitutions, but it must also be secured by the acts of the judiciary to be effective. Otherwise, convictions, such as the Appellant's, will stand in violation of our fundamental rights.

The application of Mississippi Code Ann. § 99-17-1 should also be affirmatively pursued. The state legislature has specifically spoken on this issue. If 270 days pass after arraignment, an accused must be tried or released. There is no requirement of prejudice. Further, there is no requirement that a defendant proactively demand a speedy trial. It is the intent of the People of Mississippi, as indicated by this law, that an accused must be tried within 270 days or released.

Yet despite the Mississippi Code, and the strong prior decisions regarding due process, the State maintains that the issue of speedy trial has already been adjudicated and is thus barred from further consideration. Even though the Supreme Court addressed the matter on direct appeal, the state's High Court must have believed the issue carried some merit or the Court would never have granted the original motion of the Appellant to seek post conviction relief on this claim. The state High Court is well aware of Miss. Code Ann.§ 99-39-21. As a gate keeper for collateral proceedings, the threshold the Supreme Court uses to determine a claim that is frivolous and a claim that is colorable is an important one. If the Supreme Court grants a motion for the trial court to review a petition for post conviction relief, the high court is specifically finding that the application for relief is, on its face, not procedurally barred under Miss. Code Ann. § 99-39-21 or any other statute, and that the claims presented offer a substantial showing of a denial of a state or federal right worthy of an evaluation on its merits. Stokes v. Anderson, 123

F.3d 858 (5th Cir. 1997), *cert. denied*, 522 U.S. 1134, 118 S. Ct. 1091, 140 L. Ed. 2d 147 (1998).

Finally, it is vital, as a matter of staris decisis, to reiterate the position of this Court expressed in Hymes v. State, 703 So. 2d 258 (Miss. 1997), when it was made clear that a trial court was not authorized to summarily deny a motion to vacate a conviction and sentence after the Supreme Court granted the movant's application for leave to file motion for post-conviction relief.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR POST CONVICTION RELIEF BASED UPON THE ABRIDGMENT OF HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

The State maintains that Mr. Young has failed to submit any verifications or affidavits in support of his claims of ineffective assistance of counsel. The State then continues in its argument that even though no affidavits were submitted, any submitted affidavits were insufficient to support this claim.

Reality is that supporting evidence has been presented. Cognizant of the fact that the right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial, Murray v. Carrier, 477 U.S. 478 (1986), on several different occasions, counsel for the Appellant, George S. Shaddock, failed to meet the reasonable professional standard established by Strickland. These occasions are as follows:

Counsel failed to failed to prepare for trial, arrange for witnesses, review and prepare evidence

Generally, counsel has an obligation to prepare for a trial, to arrange for witnesses, to review and prepare evidence, and, on appeal, to insure that the record is a complete record of the proceedings below. See, Miller v. State, --- So.2d ----, 2005 WL 2981485 (Miss.App.,2005)(lack of trial preparation and pretrial investigation can support claim of ineffective assistance of counsel)

In the instant matter, Attorney Shaddock did not. He failed to illicit testimony from a witness Shawanda Green, testimony that would have indicated a motive for murder by Michael Coleman. Counsel failed to illicit testimony from Jessie Leger, testimony that would have served as a character witness as to Appellant's innocense. In fact, counsel failed to illicit any testimony from any defense witnesses. **As reflected on the affidavit submitted to the trial court below,** counsel failed to share discovery with the Appellant, failed to call character witnesses, and failed to inform the Appellant of forensic evidence which, if left uncontroverted as it was at trial, would be damaging to the defense's case. Counsel failed to illicit a time of death argument, available from the forensics of the victim, to support an alibi defense. Mr. Shaddock refused, contrary to the accused's wishes, to put Mr. Young on the stand.

The list of trial errors are numerous. One such trial error involves the forensic evidence associated with the victim's blood. As reflected in the affidavit submitted to the lower court, Mr. Shaddock failed to call a blood splatter expert to address the blood stains on the Appellant's pants. In fact, counsel's failures allowed the jury to maintain the incorrect impression that the blood splatter pattern on the Appellant's slacks arose from the murder victim during the course

of the murder. While the State insisted that the Appellant's slacks reflected the victim's blood transferred at the time of the murder, the Appellant had a blood splatter expert who was prepared to testify that the slacks represented a blood splatter pattern consistent with holding a dying victim in the Appellant's arms. In applying the *Strickland* standard to even this single failure, this court must inquire whether the deficient performance supports a conclusion that the outcome of the trial would have been different but for these errors.[1] See, *Strickland*; Jones v. Barnes, 463 U.S. 745 (1983)

Counsel's trial performance included other failures. Counsel failed to seek suppression of any DNA evidence found on trousers not worn on the day of the crime. Counsel failed to investigate if the victim was raped before death, and whether any other DNA or forensic evidence supported alternative perpetrators. Counsel refused to object to the refusal of the state's crime lab to discuss forensic findings with the defense. In sum, counsel failed to call witnesses, failed to hire experts, failed to challenge adversarially the state's experts, failed to challenge the forensic evidence. Mr. Shaddock was not prepared for this trial, and due to his deficiencies, Mr. Young was found guilty.

To add insult to injury, Mr. Shaddock failed to establish a record, and maintain its existence for appellate review. Transcripts were missing, and no effort was undertaken to insure the completeness of the transcripts. *See*, Dobbs v. Zant, 506 U.S. 357, 113 S.Ct. 835, 122

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[1]As reflected on Exhibit 2 submitted to the lower court, affiant noted the professional expectation, "I would have expected the defense attorney to have petitioned the court for its own analyst prior to the trial and have that analyst present at court to advise him on the testimony given by the state."

L.Ed.2d 103 (1993), and Gardner v. Florida, 430 U.S. 349, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977)(counsel has a professional obligation to forward a complete record for appellate review.)

Counsel failed to discuss a plea offer

On April 8, 2002, Mr. Shaddock noted to the Appellant that a plea offer was made to the defense prior to going to trial. Notwithstanding Mr. Shaddock's game-day exclamation that "We are going to trial even though a plea is offered!", no plea was ever discussed with the Appellant. See, Affidavit of Mr. Young, Exhibit 3, previously submitted to the lower court. While Mr. Shaddock does not recollect any plea offer being made, see November 22, 2005 letter, Exhibit 4 to the original motion, he does not maintain a recollection that one was not made.

Across the nation, it is established that a defense attorney's failure to notify his client of a prosecutor's plea offer constitutes ineffective assistance of counsel under the Sixth Amendment and satisfies the first element of the *Strickland* test. *See,* Turner v. State, 858 F.2d 1201, 1205 (6th Cir.1988) (agreeing with the district court that "an incompetently counseled decision to go to trial appears to fall within the range of protection appropriately provided by the Sixth Amendment"), *vacated on other grounds,* 492 U.S. 902, 109 S.Ct. 3208, 106 L.Ed.2d 559 (1989), *reinstated,* 726 F.Supp. 1113 (M.D.Tenn.1989), *aff'd,* 940 F.2d 1000 (6th Cir.1991).See also United States v. Blaylock, 20 F.3d 1458, 1465-66 (9th Cir.1994) ("If an attorney's incompetent advice regarding a plea bargain falls below reasonable standards of professional conduct, *a fortiori,* failure even to inform defendant of the plea offer does so as well"); United States v. Rodriguez, 929 F.2d 747, 753 (1st Cir.1991) ("there is authority which suggests that a failure of defense counsel to inform defendant of a plea offer can constitute ineffective assistance

of counsel on grounds of incompetence alone, even absent any allegations of conflict of interest"); Johnson v. Duckworth, 793 F.2d 898, 902 (7th Cir.1986) ("in the ordinary case criminal defense attorneys have a duty to inform their clients of plea bargains proferred by the prosecution, and that failure to do so constitutes ineffective assistance of counsel under the Sixth and Fourteenth Amendments"); United States ex rel Caruso v. Zelinsky, 689 F.2d 435, 438 (3d Cir.1982) ("a failure of counsel to advise his client of a plea bargain ... constitutes a gross deviation from accepted professional standards").

While the State argues factual differences in its brief, suggesting that no plea was ever offered, such is the matter of hearings and factual determinations, and not statements of fiat expected to be accepted by a State.

An evidentiary hearing would reflect that a plea was proferred prior to trial. Further, it would show that Mr. Shaddock never communicated that plea to the Appellant, in violation of Mr. Young's constitutional rights. Mr. Shaddock further never explained any plea offer to a lesser included offense offered to him by the State. *See,* Davis v,. State, 743 S02d 326 (Miss 1999) Finally, such a hearing would reflect the prejudice incurred by counsel's failure to transmit the plea to the Appellant.

Counsel failed to pursue speedy trial claim

The record is clear that on July 24, 2001, the Appellant filed a Motion for Speedy Trial (CP-6), A hearing was held on this case to address the then pending motions of the Appellant concerning speedy trial, discovery, and bond. The trial court did not rule on the speedy trial motion. Counsel, in a professional act below what is reasonably expected of defense attorneys,

refused to request the court to address this matter. He let it go. He failed to establish a record for appeal. And as the Mississippi Supreme Court noted in its January 20, 2005 opinion,

> Young did not pursue his demand for speedy trial, nor his motion to dismiss, to a ruling by the trial court. Because Young failed to raise this issue in his motion for a new trial, there is no trial court order to review, no findings on the record, and no response from the State as to the pre-indictment delay. at page 818
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> . . .
>
> We have repeatedly held that a defendant's failure to assert his right to a speedy trial must be weighed against him. Watts v. State, 733 So.2d 214, 236 (Miss.1999). at page 818
>
> . . .
>
> Our law is clear that an appellant must present to us a record sufficient to show the occurrence of the error he asserts and also that the matter was properly presented to the trial court and timely preserved. Lambert v. State, 574 So.2d 573, 577 (Miss.1990) (citing Moawad v. State, 531 So.2d 632, 635 (Miss.1988) and Williams v. State, 522 So.2d 201, 209 (Miss.1988)). This issue is without merit. at page 819

Counsel's failure to pursue a speedy trial violation is grounds for a claim of ineffective assistance of counsel. Hymes v. State, 703 So.2d 258 (Miss.1997).

Counsel failed to address a third party confession letter

In September of 2000, Appellant's counsel received a letter of confession wherein the victim's husband confessed to killing his wife. To this Honorable Court, this little known fact is repeated: in late 2000, a clear confession letter from the victim's husband was sent to the Appellant. With the following brief words, the Appellant's innocense was clear:

> ". . . well like you said I ended Lelia's life because she was a whore (sic) to you & Malcolm & others, but to tell you the truth I didn't mean to kill her. I was fed up and I had to do something." See Exhibit 5.

This pivotal piece of evidence was immediately turned over to the police investigators for the State with the understanding that the State would have its laboratory examine the letter for fingerprints and DNA in order to establish the author of this exculpatory evidence. See, Exhibit 6.

However, this testing did not occur. At trial, one of the principal detectives admitted that she did not send the evidence for examination because she thought that too many people had touched it. No laboratory ever had the opportunity to exam this evidence and counsel never objected to this failure, never sought independent examination, and never raised the matter on appeal. *See*, Jones v. Barnes, supra.

Counsel's failures prejudiced Appellant

In order to present a successful *Strickland* challenge to actual ineffective assistance of trial counsel, Appellant must show that his counsel's performance was so deficient as to constitute prejudice, and that but for the counsel's errors the outcome in the trial court would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *See* also, Covington v. State, 909 So.2d 160(Miss.Ct.App.2005) (discussing Mississippi law on ineffective assistance of counsel).

While assertions of error without prejudice do not trigger reversal, Hatcher v. Fleeman, 617 So.2d 634, 639 (Miss.1993), the second prong of the *Strickland* test requires "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Mohr v. State, 584 So.2d 426, 430 (Miss.1991). This means a ""probability sufficient to undermine the confidence in the outcome."" *Id.*

Counsel's errors, singularly and cumulatively, both as a matter of law and logic, sufficiently undermined the confidence in the outcome of the proceedings to meet this standard. In failing to utilize an expert to address forensics, both of the slacks and of the confession letter, the standard of *Strickland* was unfortunately met. Brown v. State, 749 So.2d 82, 90-91 (Miss.1999) In failing to call witnesses for the defense, witnesses that affidavits (and an evidentiary hearing) reflect would have provided a vigorous defense, the standard of Strickland was unfortunately met. Chancellor v. State, 745 So.2d 857 (Miss.App.,1998). And in failing to maintain the professional norms of adversarially testing the state's case, through witnesses, forensics, and evidence, the standard of *Strickland* was unfortunately me. *See*, Bishop v. State, 882 So.2d 135 (Miss.,2004); Quitman County v. State, 910 So.2d 1032 (Miss.,2005).

Not only did defense counsel fail in the foregoing, he failed to offer any evidence in the Appellant's defense. Counsel's inaction in conducting the Appellant's defense amounted to constitutionally deficient performance, and was totally inexcusable. This court should find that counsel's performance in conducting the Appellant's defense was constitutionally deficient, as counsel completely failed to effectively conduct any defense on behalf of the Appellant, and that the Appellant was consequently prejudiced.

Finally, the holding of Hymes is reiterated in that a trial court is not authorized to summarily deny a motion to vacate a conviction and sentence after the Supreme Court granted the movant's application for leave to file motion for post-conviction relief.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST FOR AN EVIDENTIARY HEARING PRIOR TO DISPOSING OF HIS POST CONVICTION RELIEF MOTION.

In its Order denying post conviction relief, the circuit court stated that "no action was taken in this matter by the plaintiff. . . to seek a hearing on the matter." This conclusion is factually incorrect. To the extent that the lower court denied relief on this conclusion, the Order should be reversed.

The Appellant repeatedly requested an evidentiary hearing on his motion and, in fact, demanded that he was entitled to one. This Court is urged to review the final substantive paragraph of the Appellant's Motion to the circuit court. In that section, the Appellant contends that, at a minimum, he is entitled to an evidentiary hearing on the matters raised in the instant motion. The Appellant submits that resolution of the issues raised will require an examination of evidence beyond the scope of the record. Therefore, the Appellant suggests that a studied examination of the relevant evidence by this Court would best occur in an evidentiary hearing.

Miss. Code Ann. §99-39-23 outlines the parameters for such evidentiary hearings. Caselaw interpreting this statute is consistent that when the record below is required to be expanded to investigate claims of ineffective assistance, an evidentiary hearing is mandated. See, Hannah v. State, 943 So. 2d 20 (Miss. 2006).

IV. CONCLUSION.

The Appellant respectfully requests that this Honorable Court reverse the order of the trial court and sustain his motion for post conviction relief, so that he may receive the full scope of constitutional protections guaranteed to him by the constitutions of the United States and the State of Mississippi.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to the Mississippi Rules of Appellate Procedure, the undersigned counsel certifies that the reply brief for Appellant is 15 pages in length and therefore complies with the MRAP rules governing reply briefs.

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Jon A. Green, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief appended hereto has been sent this 2 day of May 2009, by regular U.S. Mail with sufficient postage affixed thereto to insure delivery thereof to the:

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EXHIBIT A

Affidavit

Brian A. Young
versus
State of Miss.

Post Conviction Motion

Affidavit of: BRIAN A. Young

I, BRIAN A. Young, swear and affirm the following:

1. My trial attorney, George B. Shaddock advised me that I would be considered parole after serving 10 years of my life sentence, and;

2. The above additionally pursuaded me to go to trial in this case. Further Affiant Sayeth Naught.

AMY D. SIMMONS NOTARY PUBLIC LAUDERDALE COUNTY, MS

Notary Public State of Mississippi
At Large
My Commission Expires
September 14, 2007
BONDED THRU
HEIDEN, BROOKS & GARLAND, INC.

Brian A. Young
affiant

Subscribed and sworn to me on this the 24th day of Aug 2005.

Amy D. Simmons
Notary Public

AFFIDAVIT

STATE OF MISSISSIPPI
VS.
BRIAN A. YOUNG

POST CONVICTION RELIEF PETITION

AFFIDAVIT OF BRIAN A. YOUNG

1. I, Brian A. Young HEREBY SWEAR AND AFFIRM THE FOLLOWING:

2. ON OR ABOUT APRIL 8, 2002, AT MY TRIAL, I BELIEVE THE STATE TENDERED A PLEA OFFER TO MY ATTORNEY GEORGE SHADDOCK.

3. ON OR ABOUT APRIL 8, 2002, MY ATTORNEY SAID : "THERE IS A PLEA OFFER BUT WE ARE GOING TO TRIAL."

4. MY ATTORNEY DID NOT COMMUNICATE OR EXPLAIN ANY PLEA OFFER TO ME IN TERMS OR CONDITIONS.

5. IF A PLEA OFFER WAS FOR A LESSER INCLUDED OFFENSE AND WAS LESS THAN A LIFE SENTENCE OR I BELIEVED THE STATE POSSESSED ENOUGH EVIDENCE TO CONVICT ME, I WOULD HAVE TAKEN THE OFFER INSTEAD OF FACING TRIAL UNDER MURDER.

FURTHER AFFIANT SAYETH NAUGHT.

DATED THIS 28 DAY OF Sept. 2004.

Brian A. Young

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 24th DAY OF Sept. 2004.

Amy D. Simmons
NOTARY PUBLIC

AMY D. SIMMONS NOTARY PUBLIC LAUDERDALE COUNTY, MS

Notary Public State of Mississippi
At Large
My Commission Expires
September 14, 2007
BONDED THRU
HEIDEN, BROOKS & GARLAND, INC.

C.

IN THE SUPREME COURT OF MISSISSIPPI AND THE
CIRCUIT COURT OF JACKSON COUNTY

AFFIDAVIT

I, Brian A. Young, DECLARE UNDER THE PENALTY OF PERJURY THAT THE ABOVE AND FOREGOING IS TRUE AND CORRECT.

1. MY ATTORNEY GEORGE S. SHADDOCK STATED THAT THE DNA IN MY CASE WAS NEGATIVE AND IN MY FAVOR, AND; HE STATED THAT,

2. THE HUSBANDS HANDWRITING TEST WAS POSITIVE FOR THE CONFESSION LETTER IT WAS TESTED AGAINST, AND; HE STATED THAT,

3. HE DID HIS OWN INVESTIGATING AND THAT MY FAMILY DIDN'T HAVE TO HIRE ONE, AND;

4. I, Brian A. Young, REQUESTED CHARACTER AND CORROBORATING WITNESSES WHO WERE AT TRIAL IN MY BEHALF, BUT MR. SHADDOCK REFUSED TO PUT THEM ON THE STAND, AND;

5. I, Brian A. Young, MENTIONED TO MR. SHADDOCK THAT THE STATE'S POTENTIAL WITNESS WAS SIGNALING TO STATES WITNESSES WHILE THEY TESTIFIED AND HE REFUSED TO OBJECT, AND;

6. I, Brian A. Young, MENTIONED TO MY ATTORNEY THAT THE SAME WITNESSES WERE DISCUSSING EACH OTHER TESTIMONY OUTSIDE OF THE COURTROOM BUT HE REFUSED TO OBJECT, AND;

7. I, Brian A. Young, STATED TO MY ATTORNEY PRIOR TO AND DURING MY TRIAL OF APRIL 8, 2002, THAT I HAD FOUND THE VICTIM STABBED AND ALREADY DEAD, BUT HE INSISTED TO MENTION THAT THE VICTIM HAD DIED IN MY ARMS WHICH WAS CONTRARY TO OUR DISCUSSION AND THE TRUTH, AND;

8. I, Brian A. Young, REQUESTED THAT MY ATTORNEY LOCATE ANY POTENTIAL WITNESSES AT THE BUDGET IN TO ASCERTAIN NO ONE HEARD OR SAW ANYTHING

RELEVANT TO MY CASE AND TO INVESTIGATE THE SUPPOSE PHONE CALL WHICH WAS MADE TO THE VICTIM, AND;

9. I, Brian A. Young, REQUESTED THAT THE CONFESSION LETTER BE SENT TO A LAB PRIOR TO TRIAL, AND;

10. I, Brian A. Young, REQUESTED THAT HE PROVE THAT THESE BLUE JEANS SHORTS WHICH INCLUDED DNA OF THE VICTIM WAS NOT THE JEANS I HAD ON - ON THE MORNING OF THE CRIME FROM THE CASINO TAPE IN THE STATE'S POSSESSION, AND;

11. I, Brian A. Young, REQUESTED TO MY LAWYER TO POINT OUT THE DISTANT IT IS FROM PASCAGOULA TO PRICHARD ALABAMA TO ASCERTAIN THAT I HAD LEFT THE VICTIM'S ROOM IN FIVE MINUTES AS THE POLICE REPORT MENTIONS AND DROVE TO ALABAMA FOR 8:30, AND;

FURTHER AFFIANT SAYETH NOT,

Brian A. Young
AFFIANT

SUBSCRIBED AND SWORN TO ME THIS THE 2nd DAY OF August 2004.

Amy D. Simmons
NOTARY PUBLIC

MY COMMISSION EXPIRES: 09/14/07

AMY D. SIMMONS NOTARY PUBLIC LAUDERDALE COUNTY, MS

Notary Public State of Mississippi
At Large
My Commission Expires
September 14, 2007
BONDED THRU
HEIDEN, BROOKS & GARLAND, INC.