IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

PAUL HOUSER — APPELLANT

VS. — NO. 2008-KA-0588

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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PAUL ALLEN HOUSER — APPELLANT

VERSUS — NO. 2008-KA-0588-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Procedural History

Paul Allen Houser was convicted in the Circuit Court of Lowndes County on a charge of possession of methamphetamine precursors and was sentenced as a subsequent and habitual offender to a term of 60 years in the custody of the Mississippi Department of Corrections. (C.P.) Aggrieved by the judgment rendered against him, Houser has perfected an appeal to this Court.

Substantive Facts

Crystal Strickland testified that in May 2006, she was working the 10:00 p.m. to 6:00 a.m. shift at Dutch Village, a convenience store/pharmacy in Columbus. She was familiar with the defendant, who had a routine of coming to the store twice a week during the early morning hours to purchase BC powders, Mountain Dew, ice cream, and a newspaper. (T.448-51)

At approximately 3:00 the morning of May 5, 2006, the defendant, Paul Houser, entered the store and placed two six-volt batteries, a six-pack of BC powders, a 24-ounce bottle of Mountain Dew and a copy of the *Tradewind* on the counter. As he did so, he was talking on his mobile phone. When Officer Wade Beard drove into the parking lot, the defendant's demeanor changed quickly. According to Ms. Strickland, "He [Houser] got, like, real nervous, and he was rushing me to hurry up and put his stuff in the bag. ... He said, 'Hurry up and put my stuff in the bag so I can go.'" When Ms. Strickland did not package his purchases quickly enough to suit him, "then he was trying to bag it himself." The defendant "just kept looking out the window" at Officer Beard was "he was rushing" Ms. Strickland. (T.453-55)

When Officer Beard entered the store, the defendant made a quick exit with his purchases. Accord to Ms. Strickland, "He [Houser] was walking real fast and just watching him [Officer Beard] as he was going out the door." Houser got into his vehicle and "backed up really fast. Faster than you normally would when you're backing out of a parking space." When Officer Beard asked Ms. Strickland "was everything okay," she "said, well, that's the guy that I've told y'all about about buying pills."[1] After Ms. Strickland gave Officer Beard this information, he "called for another officer" and then departed the store, headed "[t]owards the same way" the defendant had gone. (T.455-57)

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[1]Ms. Strickland went on to testify that Houser "used to come in and try to buy pills all the time," but the "pills" were in a restricted area during her shift. (T.456)

Officer Beard testified that he was employed as a K-9 officer with the Columbus Police Department. He had undergone training in the handling of police dogs and had had the been associated with a certain such dog, named Merck, since 1998. (T.482-83)

In May 2006, Officer Beard routinely worked the 5:45 p.m to 6:00 a.m. shift. It was his habit to keep certain businesses, including Dutch Village, under watch during the early morning hours. At approximately 3:00 on the morning in question, Officer Beard "pulled up" to the Dutch Village, where he "noticed a white male gentleman inside at the cash register." (T.484-86) Officer Beard recounted the ensuring events as follows:

> My first impression when I opened the door is that the white male, he just snapped around and noticed that I was a police officer coming in the door.
>
> I noticed him using some hand gestures towards the cashier. At that point there, I didn't know what she was putting in the bag or what was going on with the bag. My first instinct was they was [sic] getting robbed.
>
> And I started playing close attention to the male. She ended up handing him the bag, and the male, he kept watching me, paying attention to me.
>
> I went on and walked behind– towards– around behind the corner of the store, in the back part area of the store.
>
> The male, he would glance back and look and see if I was following him. And as soon as he went out the door, the store clerk said, that's the guy I've been telling you about, that's the guy. She said, he just bought some BC batteries [sic]– and some– or some batteries and some red BC.
>
> I said, well, that's the one you've been telling me about all this time? She said, yeah, that's him.
>
> And by this time, Mr. Houser was driving off. I – at that time I called to see if another unit was close, which was Officer Scott Quinn.

> Mr. Houser, I noticed then, he looked over his shoulder again as he's pulling out of the store to see if I was following him.
>
> I didn't approach Mr. Houser at that time, because it's– to my knowledge, every one that I've dealt with, users of meth, they're either armed or everybody you deal with with meth, they've got a– a paranoid schizophrenic. They just carry weapons, they're always resistant toward law enforcement.
>
> So I wanted to wait until I had back-up, because we didn't know what we was [sic] going to have with him.
>
> (T.486-87)

Under further questioning, Officer Beard testified that when Houser first observed him, "He paid too much attention to a law enforcement officer walking into a store at 3 in the morning than a normal person that's not committing a crime would pay, with my 15 years experience." Houser also left the store "in a quicker manner than the normal person would leave a parking lot." (T.488-89)

Officer Beard pursued Houser, surreptitiously at first, up Highway 12. After Officer Beard "rounded about the second curve" on that highway, he saw that Houser's "brake lights was [sic] on, and he was stopped in the middle of the road." When Officer Beard came "around the curve," Houser "let off his brakes and took a right on Sand Road," moving "at a pretty good rate of speed." Having ascertaining from the police dispatcher that other law enforcement units were in the area to provide back-up, Officer Beard decided "to go ahead and stop him [Houser]." After having activated his blue lights, Officer Beard pursued Houser for 100 to 200 yards before Houser finally stopped his vehicle at Craddieth and Sand Road. Officer Beard "held Mr. Houser

at gunpoint until" he "could get another officer there and approach the vehicle safely."[2] (T.490-91)

After Officer Quinn "pulled up," Officer Beard "got Mr. Houser out of the vehicle, placed him with his hands on the side of the truck. Officer Quinn then patted him down for weapons ..." Houser "was wanting to know" why he had been pulled over. Officer Beard then "asked him if he had a problem" with their searching his vehicle, and Houser objected. Officer Beard then set Merck upon the truck. (T.492-93)

Asked to recount what happened next, Officer Beard testified as follows:

> Basically, what we started doing with the Columbus Police Department, with my dog being an aggressive dog, residual odor is not nothing [sic] that you can charge anybody with, but instead of my dog– allowing my dog to do the final response, I didn't even get a chance to pull him off this time. My dog actually attempted to jump in the vehicle of the– Mr. Houser's.
>
> (T.494)

---

[2]Officer Beard explained his approach as follows:

> Goes back to like I say, you know, 15 years, we've been dealing with meth for 15 years now, and meth has pretty much took [sic] over everything, as far as drugs now.
>
> And everybody you deal with with meth, they're paranoid, they– they carry just unbelievable types of weapons. They're always just different to deal with as far as violent, compared to dealing with somebody on another drug.
>
> (T.491-92)

The fact that Merck "wanted to jump in the vehicle" led Officer Beard to belivee that there "had been dope in that vehicle recently, or there was residual odor of a narcotic type coming from that vehicle." (T.494)

After Merck had alerted on the vehicle, Officer Beard placed the dog back in the police car and "told Mr. Houser that he was going to check his vehicle ... " By this time, Officer Quinn had ascertained that Houser's driver's license had been suspended, "so he [Houser] was placed under arrest for the suspended driver's license and placed in the back of Officer Quinn's car." Since the defendant had been placed under arrest, Officer Beard simply secured his vehicle. Looking through the window of the car, however, Officer Beard observed BC powders and "some syringes, needles."[3] (T.495-97)

Unable to observe the batteries, Officer Beard directed an assisting officer, Officer Mistrot, to the location at which Officer Beard had seen Houser's brake lights. "And then Deputy Smith went up there, and that's where he located the batteries on the side of the road, and I believe one of them was in the road." (T.499)

Officer Beard testified additionally that "[t]here was some kind of valve in the back of the truck that was bluish-green in color." In his words, "In my experience with meth, that's the color that when anhydrous ammonia is used through that type of valve, it turns it bluish-green." (T.499-500)

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[3]Testifying on the basis of his experience, Officer Beard stated that methamphetamine users typically used such needles "to inject themselves" with the drug. (T.498)

Deputy Christopher Smith of the Lowndes County Sheriff's Department testified that he was on patrol during the early morning hours of May 5. While he was on patrol, he was advised that the defendant had purchased lithium batteries at the Dutch Village, and that the batteries were missing from his truck. When he went to the location described by Officer Beard, Deputy Smith found "a cardboard box flipped over, upside down, ... in the highway... Several feet away off the shoulder of the road,"he "found an intact lithium battery, complete package." Deputy Smith "stood by the intact package ... until Commander Brackin could come and retrieve it." (T.517-20)

Commander Brackin of the Lowndes County Narcotics Unit testified that he was dispatched to the scene of the stop of Houser's truck at approximately 3:20 that morning. Upon searching Houser's truck, Commander Brackin recovered an opened six-pack of BC powder on "the passenger side of the dashboard." He also took custody of the hypodermic needles. Commander Brackin asked the defendant whether he needed the needles to administer insulin, but Houser did not say that he was diabetic. Asked whether he had found "any other items ... of interest" in the truck, Commander Bracken testified, "Yes, sir. Also in the truck was .. A butane tank valve and a short piece of hose, like a garden hose." (T.528-38) When the prosecutor inquired about the significance of this discovery, Commander Bracken testified as follows:

> [A]nybody that's actually had a propane tank used for outdoor grilling or things like that, when you have it out for a while, once it's used for a while, you'll notice that the brass fitting will actually have a greenish discoloration to it from corrosion.
>
> We find that in cooking methamphetamine, oftentimes, very often, they use these same tanks to put anhydrous ammonia in.
>
> When they bleed the anhydrous ammonia off during the cooking process, it turns these brass valves a bluish green, bright bluish-green. It's a different discoloration.

(T.538-39)

Commander Bracken went on to explain that anhydrous ammonia was "used during the cooking process and making methamphetamine to bubble it off, " i.e., to "convert the pseudoephedrine into methamphetamine ... " The valve found in Houser's truck was bluish-green. The "short piece of hose" also found in the truck was "significant" because manufacturers of methamphetamine typically would "attach a piece of garden hose to the brass valves to bleed the anhydrous ammonia off." (T.539-40)

The prosecutor subsequently asked Commander Bracken whether any person "found in possession of a pack of BC powder and two lithium batteries" would be charged with possession of precursors. Commander Bracken answered, "Obviously not, just based on that." (T.542) He went on to explain,

> In such incidents, we look at ... everything that we can about the person. In some cases, these people are already known to us, if they have a background in methamphetamine.
>
> We also look at the activity surrounding the incident itself, whether or not the person was acting suspicious, the circumstances at to the time and place, prior intelligence we've received on them, whether or not they've been involved or arrested in concern with methamphetamine and labs in the past.

(T.542)

Commander Bracken's investigation had revealed that the defendant had, in fact, been convicted "of possession of methamphetamine and possession of precursors with intent to manufacture methamphetamine." (T.544)

Alicia Waldrop was accepted by the court as an expert in the field of forensic science, specializing in drug identification. Ms. Waldrop testified that she had examined the package of

BC powder and determined that the manufacturer's label indicated that it contained pseudoephedrine. Her chemical analysis confirmed this fact. (T.559-62)

Agent Tim Hamilton of the Mississippi Bureau of Narcotics was accepted by the court as an expert in the field of manufacture of methamphetamine. (T.570) Agent Hamilton testified in detail about the process of manufacturing this drug and the ingredients typically used. (T.571-84)

The defendant testified that he bought the BC powders because he had a sinus headache, and that he was unaware that the product contained pseudoephedrine. He testified additionally that he bought the lithium batteries for his "game camera," and that he had thrown them out of his vehicle because of his "prior history," which included convictions of possession of methamphetamine and methamphetamine precursors. He went on to testify that the truck he was driving that morning belonged to someone else. (T.609-12)

In rebuttal, Crystal Strickland testified that she had seen Houser in the truck in question many times before May 5, 2006. (T.632-33)

SUMMARY OF THE ARGUMENT

Houser was not tried in violation of his constitutional right to speedy trial. No error has been shown in the trial court's application of the *Barker* factors to the facts presented here.

Moreover, the court did not err in imposing the statutorily-mandated sentence. Houser's reliance on *Solem v. Helm*, infra, is unavailing.

Finally, the state presented substantial credible evidence of Houser's guilt. The court did not err in overruling the motion for new trial.

PROPOSITION ONE:

HOUSER WAS NOT TRIED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO SPEEDY TRIAL

Prior to the defendant's first trial, which ended in a mistrial, the court conducted a hearing on the motion to dismiss for lack of speedy trial. (T. 26) At the conclusion of that hearing, the court applied the factors delineated in *Barker v. Wingo,* infra, as follows:

> The length of time that has passed from the time he was arrested until the time of trial is presumptively a violation of that right to a speedy trial. It's beyond the eight-month time period.
>
> The next factor I have to look at is the invocation of that right. Best case scenario is Mr. Houser invoked that right a year after he was arrested. That would have been sometime around May of 2007.
>
> **Now, the first official invocation of that right in this file is in June of 2007. So that is some four months ago that he invoked that right.**
>
> **The reason for the delay is the first 90 days after he was indicted was the Court continues the cases as a matter of course so that the defense lawyers can request and receive discovery from the State and prepare for the trial, because of their case load.**
>
> * * * * *
>
> So I don't think that the first 90 days after he was indicted really– I think that– I think once again, for Barker v Wingo analysis, that's neutral, because it gives you the time to look through the file and prepare to defend your client.
>
> **The invocation of the rights, that was just done in June of 2007. He is being tried within four months, or a little bit over four months, of invoking that right.**
>
> The reasons for the delay, State has indicated that there are docket congestion issues, which the Court can certainly verify that.

I tried a case yesterday, I'll try one today, and who knows how many I'll try during this term.

The Court does find that this Lowndes County docket is congested. We start every term with around 495 cases before we add any new cases. And Judge Howard has indicated that the reason for continuing the case was because he was in trial on other matters.

Now, the August matter continuance is chargeable to the State, because that is a continuance on another matter, not this precursor case.

But the next term after the August term is this term, and the State has announced ready to try this case.

The prejudice prong the defendant fails on. He has shown no prejudice, other than folks might not remember things, and there's no showing of that, and he was out of bond from May until February, May of 2006 until February of 2007, when he was– received a second indictment, which did not allow him to keep bond or make bond on this charge, because it was– the second offense allegedly occurred while he was out on bond on this offense.

(emphasis added) (T.40-42)

The court then overruled the motion to dismiss. (T.42) Houser now claims this ruling constitutes reversible error.

The state submits no error has been shown in the court's factual findings, which are supported by the record, and its application of the four factors enunciated in *Barker v. Wingo*, 407 U.S. 514 (1972). While the court properly noted that the length of the delay triggered application of the remaining factors, it also found that the first 90 days of the delay was for the benefit of both parties, to allow time for discovery and review of the case, and therefore was neutral under the meaning of *Barker*. The remainder of the delay was attributable to crowded

dockets, which the court found as fact, and which has been held to be a neutral reason which is not weight heavily against the state. *Horton v. State*, 726 So.2d 238, 246 (Miss. App. 1998).

The court went on to note that the defendant had not invoked his right until late in the proceedings. While it is not fatal to his claim, "the factor still does not weigh in his favor." *Sharp v. State*, 786 So.2d 372, 381 (Miss.2001). Accord, *Lee v. State*, 759 So.2d 1264, 1268 (Miss. App. 2000); *Noe v. State*, 616 So.2d 298, 302 (Miss.1993).

Finally, the court's finding of the absence of prejudice within the meaning of *Barker*[4] is amply supported by the record. The court's disposition of this issue was proper.

The state respectfully submits the defendant was not tried in violation of his constitutional right to speedy trial. His first proposition should be denied.

PROPOSITION TWO:

THE TRIAL COURT DID NOT ERR IN IMPOSING SENTENCE

Houser argues additionally that his sentence is constitutionally disproportionate to his crime and that it constitutes cruel and unusual punishment. This issue arose during the sentencing hearing, after the state had introduced its proof that Houser was an habitual and

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[4]As the Mississippi Supreme Court observed in *Sharp*,

> Generally, proof of prejudice entails the loss of evidence, death of witnesses, or staleness of an investigation. "The possibility of impairment of the defense is the most serious consideration in determining whether the defendant has suffered prejudices as a result of delay." [citation omitted]
>
> 786 So.2d at 381.

subsequent offender. (T.678-80) At that point, the defense asked the court to consider the *Solem*[5] factors, and, if it made a threshold finding of disproportionality, to allow the defense additional time to establish the remaining factors. (T.682) The court went on to review on the record the evidence that Houser was an habitual and subsequent offender. (T.682-85) Finally, the court made its ruling, set out in pertinent part below:

> Therefore, the Court finds beyond a reasonable doubt that the State has met its burden of proof, that Mr. Houser is, in fact, an habitual offender under 99-19-81, and that he is subject to enhanced punishment under 41-29-147.
>
> * * * * *
>
> He is charged under 99-19-81 rightfully so. The State has satisfied those requirements beyond a reasonable doubt.
>
> When the Court looks at the Solem ... factors, the Court does not find that this sentence constitutes a cruel and unusual punishment.
>
> This is Mr. Houser's fourth felony conviction, all four of which are violations of the Mississippi Controlled Substances Laws of this state.
>
> * * * * *
>
> Now, accordingly, the Court believes that it has but one sentence, that the law is quite clear on this, that once's there's a determination that the gentleman is an habitual offender, and he is an habitual offender under the controlled substances laws of this state, then the Court has but one sentence.
>
> What happens then is the maximum sentence, ordinarily, would have been 30 years for this offense. As an habitual

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[5]*Solem v. Helm*, 463 U.S. 277 (1983).

> offender, it would have been 30 years without parole under 99-19-81. ...
>
> [W]th the enhancement, 41-29-147, the Court must sentence Mr. Houser to a term of 60 years in the custody of the Mississippi Department of Corrections without the possibility of earned release, parole, good time, weekend passes, whatever. He is not eligible for any early release whatsoever.
>
> (T.685-87)

Houser now contends the trial court committed reversible error in imposing sentence.

In *Hawkins v. State*, --- So.2d ----, 2008 WL 5146528 (Miss.App.) (decided December 9, 2008), a similar argument was considered and rejected with the following analysis:

> Finally, Hawkins argues that his sentence is unconstitutionally disproportionate to the crime of attempted burglary of an automobile. Hawkins relies on *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) to support his contention that his sentence of life without the possibility of parole in the custody of the Mississippi Department of Corrections is unconstitutional. ... Hawkins argues that his sentence runs afoul of the three-pronged analysis in Solem. We point out that the United States Supreme Court subsequently held that "*Solem* was simply wrong; the Eighth Amendment contains no proportionality guarantee." *Harmelin v. Michigan*, 501 U.S. 957, 965, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991). We also note that the Mississippi Supreme Court held in *Hoops v. State*, 681 So.2d 521, 538 (Miss.1996) (quoting *Smallwood v. Johnson*, 73 F.3d 1343, 1347 (5th Cir.1996)) that "[i]n light of Harmelin, it appears that Solem is to apply only when a threshold comparison of the crime committed to the sentence imposed leads to an inference of 'gross disproportionality.' "
>
> * * * * *
>
> It is well established that "[s]entencing is within the complete discretion of the trial court and [is] not subject to appellate review if it is within the limits prescribed by statute." Hoops, 681 So.2d at 537 (citing Reynolds v. State, 585 So.2d 753,

> 756 (Miss.1991)). We find no merit to this issue, as Hawkins's sentence was within the statutory limits. Thus, no further analysis pursuant to Solem is required.

Houser's reliance on *Clowers v. State*, infra, is shown to be unavailing by the following language from *Williams v. State,* — So.2d — (2008 WL 4559723) (Miss.App.) (decided October 8, 2008):

> Williams also cites to *Clowers v. State*, 522 So.2d 762, 763-65 (Miss.1988), a case in which the Mississippi Supreme Court affirmed a trial judge's decision to depart from the mandatory sentence required for a habitual offender convicted of forgery. Id. The trial judge felt that the mandatory sentence in that case was disproportionate to the crime. Id. However, this Court has previously held with respect to the holding in Clowers, that " *Clowers* is 'not the rule, but the exception.' " *Oby v. State*, 827 So.2d 731, 734(¶ 9) (Miss. Ct. App. 2002) (citing *Bell v. State*, 769 So.2d 247, 252(¶ 12) (Miss. Ct. App. 2000)).
>
> **¶ 31. Williams's sentence does not lead this Court to an inference of gross disproportionality; therefore, no proportionality analysis is necessary. Furthermore, our supreme court has upheld harsher sentences for drug possession.** See *Wall v. State*, 718 So.2d 1107, 1114-15(¶ 30) (Miss.1998) (upholding a sentence of life without parole for possession of a controlled substance for a habitual offender). See also *Tate v. State*, 946 So.2d 376, 386-87 (¶¶ 32-34) (Miss. Ct. App. 2006) (upholding a sixty-year sentence for possession of marijuana where defendant was sentenced under Mississippi Code Annotated section 41-29-147 (Rev.2005) and as a habitual offender under section 99-19-81).
>
> (emphasis added)

This Court in *Williams* went on to make the following observation, which is instructive here:

> **¶ 32. This Court has explained that "[t]he correct proportionality analysis for a habitual offender sentence does not consider the present offense alone, but within the habitual offender statute."** Oby, 827 So.2d at 735(¶ 12) (citing Bell, 769 So.2d at 251(¶ 9)). Williams was convicted of violating

> Mississippi Code Annotated section 41-29-139(c)(1)(D) (Rev.2005) for which the maximum term of incarceration is twenty-four years. Williams was properly sentenced to serve twenty-four years without possibility of parole or probation under section 99-19-81. This issue is without merit.
>
> (emphasis added)

In light of *Williams*, *Hawkins* and the cases cited in those opinions, Houser's challenge to his sentence lacks merit. His second proposition should be denied accordingly.

PROPOSITION THREE:

THE VERDICT IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE

Under final proposition, Houser argues that the court erred in overruling his Motion for New Trial inasmuch as the verdict is against the overwhelming weight of the evidence. To prevail, he must meet these exacting criteria:

> The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is well settled. "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Dudley v. State*, 719 So.2d 180, 182(¶ 8) (Miss.1998). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Dudley*, 719 So.2d at 182 . "This Court does not have the task of re-weighing the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible." *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss. Ct. App. 2001).
>
> *Smith v. State*, 868 So.2d 1048, 1050-51 (Miss. App. 2004),

Furthermore,

> The jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose testimony should be believed. [citation omitted] The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity. *Noe v. State*, 616 So.2d 298, 302 (Miss.1993) (citations omitted). **"It is not for this Court to pass upon the credibility of witnesses and where evidence justifies the verdict it must be accepted as having been found worthy of belief."** *Williams v. State*, 427 So.2d 100, 104 (Miss.1983).
>
> (emphasis added) *Ford v. State*, 737 So.2d 424, 425 (Miss. App. 1999).

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As the Mississippi Supreme Court reitereated in *Hales v. State*, 933 So.2d 962, 968 (Miss. 2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. " [citations omitted]

We incorporate by reference the proof set out in our Statement of Substantive Facts to support our position that the prosecution presented substantial credible evidence of Houser's guilt of the offense of possession of precursors as defined by MISS. CODE ANN. § 41-39-313 (1972) (as amended). Specifically, the proof and the reasonable inferences therefom showed that Houser was in the habit of purchasing BC powders, which contained pseudoephedrine; that he bought those powers and two lithium batteries on the morning of May 5; that he acted as though he were nervous and fled the scene quickly when the police officer arrived; that he threw the batteries out of the truck; that he was also found is possession of syringes and a bluish-green

valve; that the drug dog alerted on the vehicle; and that Houser had attempted to conceal the package of BC powders in the truck. See *Walker v. State*, 881 So.2d 820, 831 (Miss.2004). Houser's explanations and evidence to the contrary simply created an issue of fact which was properly resolved by the jury.

The trial court correctly submitted this case to the jury and did not err in refusing to disturb its verdict. Houser's final proposition should be denied.

CONCLUSION

The state respectfully submits that the arguments presented by Houser have no merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

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BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Deirdre McCrory, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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