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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to FRAP 34(b), Dewayne Price ("Price"), Appellant, hereby requests oral argument in this cause. Price asserts that the insufficiency of the evidence may best be presented to the Court during oral argument. Such argument will illuminate the fact that this conviction is based solely on uncorroborated, self contradictory, improbable and unreasonable accomplice testimony.

ARGUMENT

The facts in this case are clear. Price was indicted for three (3) counts of grand larceny by the grand jury of Attala County, Mississippi. He was charged with stealing two (2) four wheelers. (R. 2, p. 13). David Holmes and Cordarron Buchannon were alleged to have been involved in the larceny and were indicted along with Price.

At the trial of the cause, the primary witnesses against Price were his alleged accomplices, Holmes and Buchannon. Buchannon testified that he, Price and Holmes stole the four wheelers and loaded them in a truck. (R. 2, p. 27-30).

However, Buchannon had given a prior inconsistent statement to the State in which he did not implicate Price in the crime. (R. 2, p. 31-32). Additionally, Buchannon had enter a guilty plea to the grand larceny and was testifying against Price as a condition of that plea and the sentence he received. (R. 2, p. 30).

Holmes testified that he and Buchannon stole the four wheelers. (R. 2, p. 56). Price rode with them the night of the theft, but he did not anyway participate in the theft. In fact, he remained in the truck the entire time that Holmes and Buchannon were stealing the property. (R. 2, p. 56). Holmes and Buchannon loaded the property in Buchannon's truck. (R. 2, p. 57-58). Holmes testimony did not in any manner implicate Price in the commission of the crime.

The State offered absolutely no other probative evidence to connect Price to this crime. The stolen property was not found in his possession, and no one other than Buchannon testified that they ever saw Price with this property.

There is absolutely no evidence to connect Price to this crime other than the testimony of his alleged accomplices. The verdict of the jury was based solely on this evidence. When weighing the

sufficiency of the evidence, the trial court must consider all of the evidence in the light most favorable to the State. *May v. State*, 460 So. 2d 778, 781 (Miss. 1984). The State must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *Id.* If reasonable jurors could not have found beyond a reasonable doubt that the defendant was guilty, the conviction must be reversed. *Blocker v. State*, 809 So. 2d 640 (Miss. 2002) .

Giving the State the benefit of all reasonable inferences in this cause, there is simply insufficient evidence to support the jury verdict. The Mississippi Supreme Court has held that “the testimony of an accomplice must be viewed with ‘great caution and suspicion. Where it is uncorroborated, it must also be reasonable, not improbable, self-contradictory or substantially impeached.’” *Johns v. State*, 592 So. 2d 86, 87 (Miss. 1991).

The testimony adduced by the State from the alleged accomplices does not meet the *Johns* test. It is not reasonable, it is improbable and it is self contradictory. To use such tainted evidence to deprive a defendant of his liberty is tantamount to a denial of due process.

The State argues that this testimony was sufficient to support the conviction. However, the State’s argument is skewed, as it fails to cite the Court to any authority that allows the affirmance of a conviction in the face of such a paucity of incriminating evidence.

“If a jury verdict convicting a defendant is against the overwhelming weight of the evidence, the remedy is to grant a new trial.” *Dunn v. State*, 891 So.2d 822, 826 (Miss. 2005). The verdict of the jury in this cause is so contrary to the overwhelming weight of evidence that an unconscionable injustice would occur if this Court allows the verdict of jury to stand. *Id.*

The sole incriminating evidence in this cause was the uncorroborated and inconsistent testimony of Buchannon, an alleged accomplice. None of the other evidence presented by the State

supports the testimony of Buchannon, nor does it implicate Price in the crime.

At a minimum, slight corroboration is required to support an accomplice's inconsistent testimony. *Hathorne v. State*, 759 So.2d 1127, 1133 (Miss. 1999). In this case there is no corroboration.

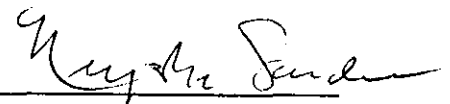
CONCLUSION

Any waiver of the directed verdict was cured by the motion for new trial filed by Price. The evidence in this cause was insufficient to support the verdict of the jury. Because of this, the trial court committed error in denying Price's motion for a directed verdict. "The critical inquiry is whether the evidence shows beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction." *Smith v. State*, 907 S.2d 292, 299 (Miss. 2005).

The verdict of the jury in this cause was against the overwhelming weight of the evidence. The weight of the evidence presented in this case fails to connect Price to the crime. With the exception of Buchannon, no witness presented by the State implicates Price in this crime. No physical evidence was introduced to connect Price to the offense.

The Court should find that the verdict of the jury is against the overwhelming weight of the evidence, and order a new trial for Price.

Respectfully submitted,
Dewanye Price

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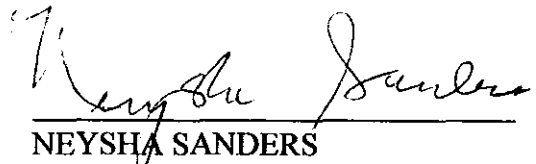
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This the 24th day of December, 2008.


NEYSHA SANDERS