IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KEITH LEON JOHNSON — APPELLANT

VS. — NO. 2008-KA-0792-COA

STATE OF MISSISSIPPI — APPELLEE

# BRIEF FOR THE APPELLEE

## APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**KEITH LEON JOHNSON** **APPELLANT**

**VS.** **NO. 2008-KA-0792-COA**

**STATE OF MISSISSIPPI** **APPELLEE**

# BRIEF FOR THE APPELLEE

## PROCEDURAL HISTORY:

On April 15, 2008, Keith Leon Johnson, "Johnson" was tried for possession of cocaine before a Newton County Circuit Court jury, the Honorable V. R. Cotten presiding. R. 1. Johnson was found guilty and given an eight year sentence in the custody of the Mississippi Department of Corrections. R. 210 ; C.P. 35. Johnson filed a Motion For A New Trial which was denied. C.P. 39-42.

From that denial of relief, Johnson filed notice of appeal to the Supreme Court. C.P. 45.

## ISSUES ON APPEAL

I.

**WAS THE JURY PROPERLY INSTRUCTED?**

II.

**WAS INCRIMINATING COCAINE PROPERLY ADMITTED?**

## STATEMENT OF THE FACTS

On May 29, 2007 , Johnson was indicted for possession of cocaine on October 18, 2006 by a Newton County grand jury. C.P. 2.

On April 15, 2008 , Johnson was tried for possession of cocaine before a Newton County Circuit Court jury, the Honorable V. R. Cotten presiding. R. 1. Johnson was represented by Mr. Shawn Harris. R. 1.

A suppression hearing was held on the contraband, cocaine, found in the instant cause. R. 57-118. After hearing the testimony, the trial court denied a motion to suppress. R. 117-118.

Officer Clay Garvin, an officer with the Decatur police department, saw a Chevrolet Cavalier traveling north. One of the headlights on the car was not working. R. 59.

He was driving without a headlight late at night. R. 60. While pursuing the car, Garvin observed the passenger throwing something out of the car along the road. R. 61-62. When the car stopped, Garvin also saw the passenger bending down inside toward the floor board of the car. R. 63-64.

When the vehicle was stopped, Garvin smelled alcohol coming from inside the car. R. 66. The driver got out of the car and provided him with a license to drive. The driver admitted that he had been drinking. He gave his consent for a search of his car. R. 67.

When Officer Garvin looked at the passenger in the car, he recognized Johnson, "aka Pooh." Officer Garvin knew from previous experience that Johnson was prone to fight or flee from police officers. R. 71.

Garvin asked Johnson what he had "throw out" of the car. Johnson replied it was just a cigarette butt. After the driver had been removed to the back of the car, Gavin asked Johnson to exit the vehicle so he could search the car. Johnson refused to do so more than once. R. 69-70.

When he finally exited the car, Johnson resisted a pat down. Johnson then tried to hit Garvin and ran down the highway. R. 72-73.

While calling for backup and continuing after Johnson , the officer testified to seeing Johnson take off his shoes. He threw them onto the side of the road. R. 73-74.

When Johnson had been captured, Officer Garvin found his abandoned shoes. Inside one of the shoes was what appeared to be crack cocaine. R. 79. Johnson did not testify at the suppression hearing.

After hearing the testimony with cross examination, the trial court denied the motion to suppress. He found there was probable cause for a automobile stop. He also found that arresting Johnson, under the facts of this case, did not constitute an illegal arrest. The court also found that Johnson had "abandoned" the contraband when he threw his shoe out on the road. R. 117-118.

Ms. Jamie Johnson with the state crime lab testified that she examined state's exhibit 1, the substance found in the shoe. She determined by scientific test that the substance was crack cocaine, 75 grams. R. 172.

After being advised of his right to testify, Johnson decided not to testify in his own behalf or present any witnesses. R. 177.

The trial court found that jury instruction D-6 dealing with constructive possession was not supported by the evidence, and was repetitious of other instructions, particularly jury instruction S-1. R. 179-184.

D-7, D-8 and D-9 were instructions informing jurors that contraband seized during an illegal arrest would be improperly in evidence, and that a defendant had a right to resist an illegal arrest. C.P. 19-20. They were refused because the trial court found that there was no illegal arrest, and that the contraband was abandoned by Johnson. These instructions were not supported by the evidence,

and would have been a comment on the evidence.

Johnson was found guilty and given an eight year sentence in the custody of the Mississippi Department of Corrections. C.P. 35. Johnson filed a motion for a new trial which was denied. C.P. 39-42.

From that denial of relief, Johnson filed notice of appeal to the Supreme Court. C.P. 45.

## SUMMARY OF THE ARGUMENT

1. The record reflects that the trial court correctly found that the jury was properly instructed under the facts of this case. R. 180-185 ; C.P. 42. There was credible, substantial evidence in support of his decision in the record.

There was credible, substantial evidence in support of the trial court 's decision to deny jury instructions D-6, D-7, D-8 and D-9. He granted D-2, D-3, D-4 and D-5 along with S-1. R. 183-185.

The trial court found that the rejected instructions were not supported by the evidence. The record reflects there was evidence of a proper legal arrest. R. 117-118. The record reflects that Johnson had no right to resist arrest, under the facts of this case.

There was a lack of evidence that "someone other than the defendant" had conscious possession or control over the cocaine found in his shoe. See jury instruction D-6. C.P. 17. This was the shoe he was seen taking off and throwing along the side of the road. Prior to seeing Johnson throw off his shoes, Officer Garvin saw him throwing something out of the car. This was the car that Garvin was attempting to stop. R. 61-63.

There must be some evidence in support of a defendant's theory of the case. Johnson did not testify or present any witnesses. R. 178. In this case, there was no evidence that anyone but Johnson had control over what was found in his shoe. Officer Garvin testified about Johnson's belligerent history. R. 71. He also testified about his actions which were consistent with drug use and abandonment. In short, there was no basis for providing instructions on an illegal arrests and/or the fruit of the forbidden tree.

2. The record reflects that the trial court properly denied a motion to suppress. R. 117-118. This was after a suppression hearing. R. 57-118. Johnson did not contest Officer Garvin's testimony at that hearing. There was credible, substantial evidence in support of the denial of the suppression

motion. R. 117.

The record reflects no seizure occurred in the instant cause. The cocaine was found in a shoe that Johnson abandoned prior to his capture and submission to law enforcement. R. 74-75.

Johnson had no standing to complain about the stop of the automobile. The vehicle had a headlight out at night. Johnson was a passenger, not the driver. The record reflects that Johnson was observed "throwing things out of the passenger side window." R. 62. This was prior to "abandoning" his shoes while running away. R. 73-74. There was credible evidence indicating that he actively interfered with the consent search granted by the driver. R. 69-70.

There was also evidence of his previous defiance and resistance to being detained for the officer's safety. Johnson ," aka Pooh," was known by the Officer to be prone to "fight and flight" when confronted. R. 71. Officer Garvin had no back up, and was faced with two men on a country road late at night.

## ARGUMENT
## PROPOSITION I

**THE JURY WAS PROPERLY INSTRUCTED. D-6, D-7, D-8 AND D-9 WERE REPETITIOUS, NOT SUPPORTED BY THE FACTS OR A COMMENT ON THE EVIDENCE.**

Johnson believes that the jury was not properly instructed in the instant cause. Johnson thinks that he was entitled to present "his theory of the case" to the jury. He believes that proposed jury instructions D-6, D-7, D-8 and D-9 should have been given. This was based upon his belief that there was doubt about whether he was properly arrested when the contraband was discovered. He thinks any doubt about the granting of these instructions should have been resolved in his favor. Appellant's page 1-10.

To the contrary, the record reflects that after a suppression hearing, the trial court found that there was no illegal arrest, under the facts of this case. R. 117.

> **I find that the–it was clearly probable cause for the stop. And then the search–and another point I would make, as far as the search, there's case law on this. The defendant abandoned his shoes, when he threw them off, them off.** There's definitely a case–I'm not–I think it's Furetta v California. Or maybe that's a case that involves something else, but where a situation just like hat, in this setting, the defendant throws it out, and the officer picks it up, and then the case is seeming to say, **the defendant has no standing as far as saying that's an unlawful search. And the officer could tie together that he saw the defendant throw it out. So as I view all of this, the court finds that the motion to suppress is not well taken, and the motion is overruled, whatever it may be, is subject to being put on in testimony of the state.** R. 116-117. (Emphasis by appellee).

The record reflects that trial court denied jury instruction D-6. He found that even if it were revised as proposed by Johnson it would be repetitive. And if it were not revised it would have been an abstract circumstantial evidence that did not fit the facts of this case. The testimony indicating that only after Johnson's abandoned shoe was searched was any cocaine found. Johnson was a passenger in another's car. He did not testify nor did the driver of the car.

Kilgore: Your Honor, there's nothing in evidence that suggests that anybody had conscious control. It's gonna be confusing to the jury, if anything.

Thames: It's strictly a circumstantial evidence–

Harris: Your Honor, I would–I would be willing to amend it to leave out the part that somebody other exercised conscious control, but the state does have to prove that he exercised conscious control over the substance.

Thames: If you–are you saying the state-that if you believe that the state failed to prove beyond a reasonable doubt that Keith Leon Johnson exercised control over the substance.

Kilgore: Your Honor, then that's repetitive to two other jury instructions.
Court: It's either repetitive or circumstantial evidence. R. 180-181.

When given an opportunity to revise D-6, Johnson refused.

Court: You're offering to amend it?

Harris: No, sir, I'm going to offer it the way it is.

Court: I'm going to refuse it. R. 182.

The trial court granted jury instruction S-1, which stated that if the jury found, from the evidence, beyond a reasonable doubt, that Johnson had "conscious control" over the cocaine found, then it was the jury's responsibility to find Johnson guilty.

> The Court instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that at the time and place charged in the indictment and testified about, that the defendant, Keith Leon Johnson, did wilfully, unlawfully and feloniously have in his possession and under his conscious control a schedule II controlled substance, namely cocaine, in an amount of more than 10 grams but less than 2 grams in Newton County, Mississippi, then it is your duty to find the defendant guilty as charged. C.P. 22.

The jury were also instructed in jury instruction D-3 that should they not find that the state had proven beyond a reasonable doubt each and every element of the state's case, then they should find Johnson not guilty. C.P. 24.

Proposed defense jury instruction 6 stated that "if you find from the evidence that someone

other than the defendant, exercised conscious control over the substances." C.P. 17. The Court found a lack of record evidence that anyone other than Johnson ever had any control over the cocaine.

Defense instruction 7 stated that a person is under arrest "if a reasonable person would have believed that he was not free to leave." C.P. 18. The record reflects that Johnson was not arrested until after he refused, more than once to exit the vehicle. He was not arrested until he had been non-cooperative, belligerent, and attempted to abscond.

Defense instruction 8 stated if the arrest was not valid, then "any evidence seized" after the arrest was not validly seized.

> The Court instructs the jury that if you determine the officer tried to arrest the defendant, but that arrest was not valid, then any evidence seized after the arrest from the defendant was not validly seized. C.P. 19.

Defense instruction 9 stated that a person has a right to resist an unlawful arrest. C.P. 17-20.

> The court instructs the jury, that if the arrest was not valid, a person has a right to resist an unlawful arrest. C.P. 20.

The trial court denied D-6 about conscious control of cocaine by someone else, because it was not supported by the evidence and was partially repetitious of jury instruction S-1. There was a lack of record evidence for holding anyone else had possession of the cocaine. It was found in the shoe that Johnson was seen removing and throwing on the side of the road.. R. 74-79. Defense instructions 7, 8 and 9 were found to be a comment on the evidence after the court found the arrest was lawful rather than unlawful. R. 180-182.

The record reflects that the trial court pointed out that it had denied a motion to suppress. R. 110-117. Johnson did not testify and contest any testimony from Officer Garvin. R. 58-117. The trial court ruled that there was no illegal arrest based upon the testimony of Officer Garvin.

Officer Garvin testified to seeing "the passenger" in the car throwing things out of the car.

Q. **All right. But you say you noticed or observed the passenger in the vehicle you're pursuing throwing things out of the passenger side window?**

A. **Yes, I did.** R. 61-62. (Emphasis by appellee).

...

Officer Garvin testified that he also saw "the passenger" appearing to place something on the floorboard or underneath the seat of the car. This was when the car in which he was traveling had stopped.

Q. What did you do once you made a stop?

A...**I saw the passenger moving in a motion that appeared to me that he was placing something in the floorboard or underneath the seat of the vehicle.** R. 63. (Emphasis by appellee).

There was also evidence that Johnson defied the officers request to vacate the car. This was the car in which he was a passenger. It was necessary for him to move so the officer could search it after being given permission. Johnson would not cooperate with the officer. He resisted being detained until after the search and or back up police had arrived. The officer was alone with two men late at night on a rural road at the time.

In **Taylor v. State**, 597 So. 2d 192, 195 (Miss. 1992) this Court stated that the trial court's instructions must be taken together and need not cover every point of importance as long as the point is fairly presented elsewhere. The trial court granted jury instruction S-1, S-2, D-2, D-3, D-4, and D-5. C.P. 21-26.

> Our well settled rule is that on appeal we consider complaints of error in jury instructions by reading the instructions as a whole. All instructions "are to be read together and if the jury is fully and fairly instructed by other instructions the refusal of any similar instruction does not constitute reversal error." **Laney v. State**, 486 So. 2d 1242, 1246 (Miss. 1986). Not every instructions need cover every point of importance, so long as the point is fairly presented elsewhere.

In **Nicholson on behalf of Gollott v. State**, 1995 WL 325386, page 6, 672 So. 2d 744, 752

(Miss. 1996), the Court stated that failure to object to a jury instruction waives that issue on appeal. Instructions also have to be supported by the evidence in the case and be a correct statement of the applicable law.

> This Court does not review jury instructions in isolation. **Malone v. State**, 486 So. 2d 360, 365 (Miss. 1986). If the instructions given provide correct statements of the law and are supported by the evidence, there is no prejudice to the defendant. **Sanders v. State**, 313 So. 2d 398, 401 (Miss. 1975). This Court has fully examined the instructions granted by the trial court in the case sub judice and finds that, taken together, the jury was correctly and completely charged.

The record reflects that the trial court correctly denied jury instruction D-6 finding it to be not supported by the evidence and partially repetitious of S-1. D-7, D-8 and D-9 were also not supported by the evidence.

There was credible, substantial evidence in support of the trial court's denial of a motion to suppress based upon an alleged illegal arrest. Johnson's actions inside the car provided a reasonable basis for a search of the car. This was in addition to the officer smelling alcohol coming from inside the car.

The driver provided consent for the search. Johnson's defiance, and resistance interfered with that search. Johnson was also known to fight or flee when confronted.

This issue is also lacking in merit.

## PROPOSITION II

**THERE WAS PROBABLE CAUSE FOR JOHNSON'S ARREST. THE RECORD REFLECTS HE ABANDONED HIS SHOE AFTER RESISTING DETENTION FOR THE OFFICERS SAFETY.**

Johnson argues that the cocaine was improperly admitted into evidence. It was improper because he believed that it was found after an illegal arrest. Johnson thinks that there was a lack of probable cause for his arrest. He was merely a passenger in a car that was stopped. Since the officer told him he was not free to go before he allegedly committed any offense, he was subjected to an illegal arrest. Appellant's brief page 1-10.

To the contrary, the appellee would submit that there is a lack of record evidence for believing that an illegal arrest occurred. Rather the record from the suppression hearing indicates that Johnson defied Officer Chad Garvin's order to get out of the car. He actively resisted and interfered with a valid search. This was after consent to search was given by the driver. R. 69-70.

The record reflects that Officer Garvin had probable cause to stop the car. The driver had committed an automobile infraction on a public road. Garvin testified to seeing "a headlight out on the vehicle." It was late at night. R. 60. When the vehicle was stopped, Garvin smelled alcohol coming from the driver. R. 66. The driver got out of the car and provided him with a license to drive. The driver admitted that he had been drinking. He gave his consent to a search of his car. R. 67.

Officer Garvin testified that he asked Johnson to get out of the car so he could search it based upon the consent provided by the driver. He also wanted him out for his own safety. He was alone in the presence of two men; one of whom was known to be hostile to police officers.

**A. At that point I walked back up to the vehicle, I asked him if he would step out of the vehicle. And informed him that I'd been given consent to search, and**

**that I needed him to step out of the vehicle while I searched the vehicle.** R. 69. (Emphasis by appellee).

When Garvin asked Johnson, the passenger, to get out of the car, he refused to do so more than once. R.69-70.

A. **He refused multiple times. I asked him two or three times to step out of the vehicle. He continually refused to do so, telling me that he wasn't driving and I could not make him get out of the vehicle.** R. 69-70.(emphasis by appellee).

Officer Gavin had also previously observed Johnson, whom he recognized from previous contact, "throwing things out of the passenger side window. " R. 61-62. He also saw him "placing something in the floorboard or underneath the seat of the vehicle." R. 63.

When Johnson finally exited the car, he resisted a pat down. He then tried to hit Garvin and ran away down the highway. R. 72-73. When running, Garvin saw him abandoning his shoes. R. 73-74.

While calling for backup and continuing after Johnson, the officer testified to seeing Johnson throw the shoes onto the side of the road.

Officer Clay Garvin testified that he wanted Johnson out of the car. He wanted him out so he could not interfere with his search. He also wanted him out for his own safety.

Q. What was the reason for you wanting him to be out of the vehicle?

A. For my safety. I didn't want him in the vehicle while I was searching the vehicle.

Q. **And could you, in your experience as a police officer, search the vehicle with someone in it?**

A. **No.** R. 69. (Emphasis by appellee).

In **Jackson v. State** 845 So.2d 727, 729 (¶ 6) (Miss. App. 2003), the appeals court found that a warrant-less arrest can be made based on "practical considerations of everyday life."

> ¶ 6. To make an arrest without a warrant, an officer must have probable cause that an offense has been committed. The probable cause is "determined by factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act. The determination depends upon the particular evidence and circumstances of the individual cases." **Smith v. State**, 386 So.2d 1117, 1119 (Miss.1980). Yet even before an arrest, officers have a right to investigate. **Linson v. State**

The record reflects that Officer Garvin was trying to search a car for which he had consent to search. However, Johnson the passenger was non-cooperative, as well as resistant to allowing himself to be detained to facilitate a search of the car. His resistance and defiance turned into aggression and then running away until he could be captured.

While chasing after Johnson, Officer Garvin saw Johnson throw off his shoes.

Q. What did you observe him doing as he was running?

A. As he was running it, he was stripping his clothes off, his jacket and his shoes.

Q. Did you observe this take place?

A. I did.

Q. **Did you see him take his shoes off?**

A. **I did.**

Q. **And what did he do with 'em?**

A. **Threw 'em off the side of the road**. R. 73-74. (Emphasis by appellee).

Officer Clay Garvin testified at the suppression hearing that he knew from past experience that Johnson had a history of fighting with officers or running when confronted about suspected unlawful activity.

> At that point, I told him that–informed him that I was going to pat him down. I didn't want to tell him at that point that I was going to place him in handcuffs or that he was under arrest because of our prior knowledge of officers in our department having dealt with him. **I knew him to be a person that would fight a police officer, or run from the police.** R. 71. (Emphasis by appellee).

Officer Garvin testified that what he found in the abandoned shoe along the side of the road looked like crack cocaine.

> Q. Now, where exactly was the item that we're talking about located in the right shoe?
>
> A. **It was the tongue of the shoe was actually pushed down, and to the right–and that item was in between the tongue and the–like the side of the shoe.** R. 79. (Emphasis by appellee).

After hearing testimony at the suppression hearing, the trial court found that Officer Garvin had sufficient grounds to stop the vehicle. This was the automobile in which Johnson was a passenger. Johnson actively interfered with Officer Garvin consent search of the car. He refused the officer's request to step out of the passenger seat. He resisted being patted down and ran until caught and subdued. Inside his shoe was found what was determined by scientific test to be cocaine. R. 172.

> **I find that the–it was clearly probable cause for the stop. And then the search–and another point I would make, as far as the search, there's case law on this. The defendant abandoned his shoes, when he threw them off, them off.** There's definitely a case–I'm not–I think it's Furetta v California. Or maybe that's a case that involves something else, but where a situation just like hat, in this setting, the defendant throws it out, and the officer picks it up, and then the case is seeming to say, the defendant has no standing as far as saying that's an unlawful search. And the officer could tie together that he saw the defendant throw it out. So as I view all of this, the court finds that the motion to suppress is not well taken, and the motion is overruled, and the contraband, whatever it may be, is subject to being put on in testimony of the state. R. 117-118. (Emphasis by appellee).

In **Harper v. State** 635 So. 2d 864, 866 (Miss. 1994), the Supreme Court relied upon **Hodari D. v. California**, 499 U.S. at 626, 111 S. Ct. at 1550, 113 L. Ed.2d at 697 , in finding that Harper a resident of Gulfport living in a high crime area was not illegally arrested. Harper, like Johnson, decided to flee when ordered to stop and identify himself by law enforcement. While being chased, an officer testified to seeing him abandon an object he was holding tightly in his hand.

> The United States Supreme Court held that the cocaine was abandoned and was not the fruit of an illegal seizure. Id. at 628-30, 111 S. Ct. at 1552, 113 L. Ed.2d at 699. The Court stated that an arrest requires " either physical force ... or, where that is absent, submission to the assertion of authority." Id. at 626, 111 S. Ct. at 1551, 113 L. Ed.2d at 697. Since Hodari did not comply with the order to halt, there was no submission to the show of authority, and, therefore, no arrest occurred within the confines of the Fourth Amendment. Id. The Court held that a seizure "does not remotely apply ... to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee." **Hodari**, 499 U.S. at 626, 111 S. Ct. at 1550, 113 L. Ed.2d at 697.

The appellee would submit that there is credible, substantial uncontested evidence in support of the trial court's finding there was "probable cause" for Officer Garvin to stop the vehicle. R. 116-117. The Chevrolet Cavalier had a front head light that was not providing any illumination at night. This was a traffic safety violation.

Johnson, who was known to Officer Gavin, was discovered to be a passenger in the front seat. After Officer Garvin had permission to search the car from the driver, Johnson refused more than once to exit the passenger seat. Once Johnson was finally out of the car, he was non-cooperative. When Officer Garvin tried to detain him with hand cuffs for his own safety, Johnson resisted and ran. When confronted, Johnson tried to hit Gavin with his fist, and then ran away from the car. This was where he was seen by Garvin abandoning his shoe. After he had been captured, the shoe was discovered to contain what appeared to be, and was later determined by scientific tests to be cocaine, .75 ounces. R. 172.

The record reflects no seizure occurred in the instant cause. The cocaine was found in a shoe that Johnson abandoned prior to his capture and submission to law enforcement.

In **Jones v. State** , 635 So. 2d 884, 887 (Miss. 1994), the Mississippi Supreme Court stated that a motion challenging the weight of the evidence was in the trial court's discretion. However, it

should be denied except to prevent "an unconscionable injustice."

> Our scope of review is well established regarding challenges to the weight of the evidence issue. Procedurally, such challenges contend that defendant's motion for new trial should have been granted. Miss. Unif. Crim. R. of Cir. Ct. Prac. 5.16. The decision to grant a new trial rests in the sound discretion of the trial court, and the motion should not be granted except to prevent "an unconscionable injustice." **Wetz v. State**, 503 So. 2d 803, 812 (Miss. 1987).We must consider all the evidence, not just that supporting the case for the prosecution, in the light most consistent with the verdict." **Jackson v. State** , 580 So. 2d 1217, 1219 (Miss. 1991), and then reverse only on the basis of abuse of discretion.

The appellee would submit that Johnson's defiant and non cooperative actions provided Officer Garvin with a basis for detaining him for his own safety. R. 69-70. Johnson's abandonment of his shoes indicates that the contraband found inside the shoe was not the fruit of an illegal search. R. 73-74. It was "abandoned" on a public road.

The record reflects no "unconscionable injustice" involved in denying Johnson's motion for a new trial. C.P. 39; 42.

The appellee would submit that this issue is also lacking in merit.

## CONCLUSION

Johnson's conviction should be affirmed for the reasons cited in this brief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, W. Glenn Watts, 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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This the 13th day of January, 2009.

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