2008-KA-00944
COA
RJ

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES:

STATE CASES:

OTHER CITATIONS:

REPLY ARGUMENT I.

THE INDICTMENT WAS INSUFFICIENT TO ALERT BROWN TO THE NATURE OF THE CHARGE.

It is inescapable that Brown was never told the truth about the charge. There were two separate acts of possession on the date the indictment alleged "possession." One was possession of the cocaine in the house. The second was the cocaine that the State alleges fell from Brown's pocket when she was on the porch.

The indictment did not specify which possession was charged. Prior to trial, the circuit court informed Brown that the cocaine in the house was not the subject of the charge. Specifically, the circuit judge stated:

> If I understand the testimony, the only rock attributed to her is the one that fell out of her pants pocket and was found on the ground. I see no reason for there to be evidence of other crack cocaine not connected to or attributed to her in any way.

TT. 26.

Although the judge had told Brown that the cocaine in the house was not the charge, the State then proceeded, over defense's objection, R. TT. 125, 128, 131, to introduce evidence and statements connecting Brown to the cocaine in the house. TT. 175, 194-98, 224.

This was plain, fatal error. It is an unassailable principle of law, that the

defendant is to be tried only upon the crime of which he is charged, and that a failure to do so denies his fundamental constitutional rights to indictment by a grand jury, and to be informed of the nature and cause of the charge against him." The purpose of an indictment is to satisfy the constitutional requirement that a "defendant be informed of the nature and cause of the accusation . . . "U.S. Const. Amend. VI; Miss. Const. Art. 3, § 26. *See, Brumfield v. State*, 40 So.2d 268, 268 (Miss. 1949) ("In common fairness, every defendant charged with a high crime is entitled to know specifically and particularly what felony is laid to his charge); *Nguyen v. State,* 761 So.2d 873, 877 (Miss. 2000) (Indictment for receiving stolen property that failed to sufficiently specify and describe property at issue was inadequate to enable the appellants to prepare their defenses); *Brawner v. State,* 947 So.2d 254, 265 (Miss. 2006) ("The purpose of the indictment is to provide the accused reasonable notice of the charges against him so that he may prepare an adequate defense"); *Evans v. State,* 916 So.2d 550, 551 (Miss. App. 2005) ("The primary purpose of an indictment is to notify a defendant of the charges against him so as to allow him to prepare an adequate defense"); *Brown v. State,* 890 So.2d 901, 918 (Miss. 2004) ("The major purpose of any indictment is to furnish the accused a reasonable description of the charges so an adequate defense might be prepared").

REPLY ARGUMENT II.

BROWN'S RIGHT TO DUE PROCESS WAS VIOLATED.

A. Brown was denied a fair trial by the prosecutor presenting evidence that she had an illicit and unlawful sexual relationship with her co-defendant, a black person.

The issue in this case was whether Patricia Brown wilfully and unlawfully had less than two grams of cocaine in her possession on January 5, 2008. R. 6. Whether she committed a sex crime, which still "remains a crime against public morals and decency...," *Sullivan v. Stringer,* 736 So.2d 514, 516 -517 (Miss. App. 1999)[1], had absolutely no bearing on the issue of whether she possessed cocaine. However, on three separate occasions, by questions to state witnesses and to Brown herself, the prosecutor took pains to inform the jury that Brown had an unlawful sexual relationship with co-defendant Julius Holesome. Such evidence was so inflammatory that this Court should presume that it had a harmful effect on the jury and reverse. *Wood v. State*, 257 So.2d 193, 200 (Miss. 1972).

In her initial brief, Brown argued that her "Fourteenth Amendment right to due process was violated and her trial was rendered fundamentally unfair by the

---

[1]Miss. Code Ann. § 97-29-1 provides: "If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months."

prosecutor's misconduct in presenting inadmissible and prejudicial evidence to the jury." *Appellant's Brief,* p. 16. One of the things Brown argued is that her "trial was rendered fundamentally unfair by the introduction of evidence that Brown, who is white, had an illicit and immoral sexual relationship with her co-defendant, who is black." *Id.*, p. 17. Brown pointed out that on two separate occasions, the prosecutor asked the investigating officers questions concerning her sexual relationship with her co-defendant, Julius Holesome. The Court sustained objections to the questions both times. TT. 153, 233. Then, during her cross examination, the prosecutor just point blank asked Brown: "How old were you when your sexual relationship with him [Holesome] started?" TT. 277.

In its response to Brown's due process claim, the State does not even mention the word "sexual." In fact, instead of phrasing Brown's arguments as they are quoted above, the State styled its argument on something that really was not even an issue. Its argument was stated as follows:

> A. Brown's argument that the trial court erred in admitting the pictures of herself and Holesome into evidence is procedurally barred.

Brief for the Appellee, p. 6.

Although Brown did note that the prosecutor introduced a picture of Brown and Holesome at trial, she did not argue that this was error. Brown did argue that she

was prejudiced by the jury being told about her having illicit sex with a black man, but her claim is not just about race. It is also about sex; illicit, unlawful sex. The prosecutor intentionally presented evidence to the jury showing that Brown had an illicit and immoral sexual relationship with Holesome. The fact that Holesome is black and Brown is white exacerbates the prejudice.

Other than to object to Brown's non-existent argument that the prosecutor erred in introducing their picture, the State argues only that defense counsel's objections were sustained and the jury was instructed to disregard the questions. *Brief of the Appellee*, p. 6. However, such an instruction could not cure the prejudicial effect of such devastating evidence. This Court held in *Sumrall v. State*, 272 So.2d 917 (Miss. 1973), "[t]he very necessity for repeated admonitions in itself may, to some extent, at least emphasize the objectionable matter which the jury, of course, has already heard, and fix it more firmly in the minds of the jurors." 272 So.2d at 919. In *Barlow v. State*, 233 So.2d 829 (Miss. 1970), this Court held that it was reversible error to ask questions requiring prejudicial answers even though objections to them were sustained because it was the effect of the questions themselves that prejudiced the jury.

In a civil case involving a automobile collision, *Holladay v. Tutor,* 465 So.2d 337 (Miss. 1985), defense counsel continued to ask witnesses questions about

marijuana being in a box in the Plaintiffs' vehicle after the trial court had twice sustained objections to such questions. The Mississippi Supreme Court held:

> Although there was absolutely no testimony in this record that would suggest that the appellants had a cigar box full of marijuana and quaaludes in their pickup truck, the trial judge properly handled the objection by instructing the jury that the question was improper and for them to disregard it. Absent any other violation with respect to the marijuana and quaaludes, there would be no reversible error. However, defense attorneys were not satisfied and later during the trial asked the second question of the park ranger. The jurors knew that the cigar box, which was asked about, was the same cigar box which was the subject of the first question with reference to marijuana and quaaludes. This conduct on the part of counsel cannot be condoned as it was prejudicial and in our opinion reversible error.

465 So.2d at 338.

The Supreme Court went on to say that in situations such as this,"[t]rial judges should ride herd on this type of conduct and impose such sanctions as are necessary to see that rulings of the court are obeyed." 465 So.2d at 338-39.

In this case, the court twice sustained objections to questions relating to the sexual nature of Brown's relationship with Holesome. The rulings were unequivocal. However, the prosecutor refused to let the matter rest. His attack on Brown's character continued when she took the stand in her own defense. At first the prosecutor asked the routine questions, where Ms. Brown lived, where she worked, how many children she had, etc. The following then occurred:

Q. Okay. And where were they the night you went to Tunica and got drunk?
A. They were with their daddy.
Q. Okay.
A. Me and him are not together.
Q. And let's talk about – so you go to Tunica, you're drunk, you get a DUI. Were you going to Tunica without any money on you?
A. Sir, I had been to Tunica, I got arrested after I left Tunica.
Q. Okay. Is that where you had been drinking was at the casino?
A. Yes, sir, it was.
Q. Okay. And then when you got out of jail there you go at about 4:30 to 5:00 a.m. you say to the home of Julius Holesome. How long have you known Julius Holesome?
A. The majority of my life.
Q. How old were you when your sexual relationship with him started?
MR. CORNELISON: Objection, Your Honor.
THE COURT: Sustained.

TT. 276-77.

Notwithstanding the fact that the Court had sustained objections to this irrelevant, inflammatory evidence, the prosecutor threw one last punch, a knockout, when he made Brown tell the jurors that she and Holesome had carried on an illicit, immoral and unlawful sexual relationship throughout the majority of their adult life.

> It is error in the course of a trial where one is charged with a criminal offense for the state to inject extraneous and prejudicial matters and lay them before the jury. A combination of such instances may become fatal error and grounds for reversal even though the court sustains objections to such question.

McDonald v. State, 285 So.2d 177, 180 (Miss. 1973).

The right to a fair trial is a "fundamental liberty" secured by the Fourteenth Amendment to the Constitution of the United States. *Hickson v. State,* 472 So.2d 379, 384 (Miss. 1985). This Court has often condemned conduct by the prosecuting attorneys that substantially deflected the jury's attention from the issues it has been called up to decide by interjecting "appeals to bias, passion or prejudice" into the trial. *Id.* Where such conduct is so substantial that the accused's right to a fair trial is substantially impaired, this Court will "unhesitatingly reverse." *Id.* This Court has also said that "[w]e will reverse a conviction unless it can be said with confidence that the inflammatory material had no harmful effect upon the jury." *Smith v. State,* 457 So.2d 327, 333-36 (Miss. 1984) (reversing where prosecutor insinuated criminal conduct unsupported by any proof and accused defense witness that she habitually engaged in an immoral crime, prostitution). *See also, Hughes v. State*, 470 So.2d 1046, 1048 (Miss. 1985) (reversing where prosecutor asked the defendant if he was living with a woman."); *Sumrall v. State*, 272 So.2d 917, 919 (Miss. 1973) (reversing where prosecutor asked defendant if he was "living with ... the little 15 year old girl); *Wood v. State,* 257 So.2d 193, 199-200 (Miss. 1972) (reversing where prosecutor directed questions toward the immorality of the defense witnesses and their families); *Holladay v. Tutor,* 465 So.2d 337, 338 (Miss. 1985) (reversing where testimony introduced about plaintiffs' allegedly having marijuana in their car).

B. It was plain error for the prosecutor to introduce evidence that Brown's co-defendant pled guilty to the charge for which they were both indicted.

The indictment charged that Patricia Brown ***and*** Julius Holesome wilfully and unlawfully had less than two grams of cocaine in their possession on January 5, 2008. R. 6. No doubt, once the jurors were advised that Holesome had pled guilty to the charge, some of them assumed that Brown must have been guilty also. Since Brown and Holesome were accused of committing the same crime, and committing it together, a juror could logically assume that if Holesome pled guilty to committing the crime, Brown must be guilty too.

"The law is well settled in this state that where two or more persons are jointly indicted for the same offense but are separately tried, a judgment of conviction against one of them is not competent evidence on the trial of the other because such plea of guilty or conviction is no evidence of the guilt of the party being tried." *McCray v. State,* 293 So.2d 807, 808 (Miss. 1974) (citing *State v. Thornhill,* 251 Miss. 718, 171 So.2d 308 (Miss. 1965). This Court has held that placing such information before a jury denies the defendant the fundamental right to a fair trial, and is reversible error. *See Buckley v. State,* 223 So.2d 524 (Miss. 1969); *McCray v. State,* 293 So.2d 807 (Miss. 1974); *Henderson v. State,* 403 So.2d 139 (Miss. 1981); *Johns v. State,* 592 So.2d 86 (Miss. 1991). The reasoning behind this rule has been

stated as follows:

> [once a jury is apprised of the fact that a co-defendant has been tried and convicted for the same charge for which the defendant is now on trial, the jury's] ability to objectively reach a fair verdict on the merits of the competent evidence before it [is] necessarily seriously impaired. The jury [is then] placed in the untenable position of pitting its prospective verdict against a guilty verdict previously entered by another jury carrying with it the court's approval by way of the judgment and sentence.

McCray, 293 So.2d at 809.

Porter v. State, 749 So.2d 250, 261 (Miss. App. 1999), recognized that an error is plain if it "affects substantive rights of the defendant." *Grubb v. State,* 584 So.2d 786, 789 (Miss. 1991). The plain error doctrine has been construed to include anything that "seriously affects the fairness, integrity or public reputation of judicial proceedings." *United States v. Olano,* 507 U.S. 725, 732-735 (1993). This Court's analysis, therefore, necessarily includes a determination of (1) whether there is, in fact, "error," that is, some deviation from a legal rule; (2) that the error is "plain" or "clear" or "obvious;" and (3) was it prejudicial in its effect upon the outcome of the trial court proceedings. *Id.* 507 U.S. at 732-735.

In this case, there was a deviation from a plain legal rule and the error was clear and obvious. The prosecutor intentionally informed jurors that Brown's co-defendant had pled guilty to the crime for which they were both charged. Making the jurors

aware that Holesome had pled guilty to possessing the crack cocaine with which both he and Brown were charged with possessing was a clear violation of the law established in *Porter v. State,* 749 So.2d 250 (Miss. App. 1999).

This Court has recently reversed convictions upon finding plain error. See *McGee v. State*, 953 So.2d 211, 215 (Miss. 2007) (plain error in gender discrimination in selection of jury); *Mitchell v. State*, 788 So.2d 853 (Miss. App. 2001) (plain error in giving instruction on criminal acts not charged).[2]

The error in Brown's case was more egregious than those in *McGee* and *Mitchell*, and the resulting prejudice more serious. This Court should, therefore, find that the prosecutor's proof that Holesome pled guilty to the crime that both he and Brown were charged with was plain error.

C. It was reversible error for the prosecutor to show that Brown had a propensity to commit the crime with which she was charged, the possession of one rock of crack cocaine, by presenting evidence showing that other cocaine was found in the house where she was arrested.

This trial should have been, and Brown and her attorney thought it was going to be, a straightforward credibility case. Brown was charged with the possession of

---

[2]In *Mitchell,* the indictment charged that she "did wilfully, unlawfully, and feloniously and knowingly *sell* Cocaine, a Schedule II controlled substance." The instruction which the Court found to be plain error stated that the jury could find Mitchell guilty if they found that she "did unlawfully and knowingly *sell, barter, or otherwise dispense or deliver* Cocaine, a schedule II controlled substance . . ." 788 So.2d at 857.

one rock of crack cocaine. R. 6. At trial, Narcotic Agent Kevin Rodgers testified that he saw a rock of crack cocaine fall out of Brown's pocket. TT. 118. Brown testified that he was lying. TT. 280-81. If that had been the only evidence the jury had to consider, the verdict could have been different. But the prosecutor made sure the jury heard a lot more evidence about cocaine, and he presented the evidence in such a way that the jury was almost forced to infer that the cocaine the prosecutor was telling them about was cocaine that Brown had purchased and that it belonged to her.

Prior to trial, the prosecutor and the trial court assured Brown and her attorney that evidence of the cocaine found in the house would not be introduced at trial. TT. 26–27. At trial, however, the prosecutor was allowed to introduce evidence that crack cocaine was found inside the house on a stand beside the couch in the living room and in the clothes basket in Holesome's bedroom. TT. 128, 131. There was no legitimate reason for the cocaine in the house to be mentioned.

If the prosecutor thought he would need to advise the jury about the cocaine that was found in the house in order to obtain a conviction against Brown, he should have added another count to the indictment and charged Brown with the possession of that cocaine too. Had he done that, Brown could have prepared a defense to that charge. As it was, she and her attorney went to trial thinking that the only issue would be one of credibility. Agent Rodgers said he saw the rock of crack cocaine fall out of Brown's

pocket. Brown said that it didn't. TT. 118, 280-81.

"It is a well-settled general rule that the issue on a criminal trial should be single and that the testimony should be confined to that issue and on the trial for one offense the prosecution should not be allowed to aid the proof against the defendant by showing he committed other offenses, even though of a like nature." *Tucker v. State,* 403 So.2d 1274, 1275 (Miss. 1981). The State tries to excuse the prosecution's obvious disregard of this rule by arguing that evidence of the cocaine found in the house was introduced to tell "a rational and coherent story of what happened, as is the defendant," citing *Neal v. State,* 451 So.2d 743, 759 (Miss. 1984). Comparing the "coherent story" theory of *Neal* to Brown's is a long stretch.

Neal killed three people, all three of them his relatives. He first killed his brother, the father of one of his victims, and then killed her and her cousin after he had raped them. Neal confessed and gave a written statement admitting to all three killings. The State tried Neal for the rape and capital murder of the daughter first. The confession was introduced as evidence. Neal was convicted. On appeal, Neal complained about the jury being told that he killed his brother and the cousin. The Supreme Court held that if evidence of other crimes had not been introduced in *Neal,* "the confession would be incoherent and, from the standpoint of the interest of justice, arguably unworthy of belief." *Neal,* 451 So.2d at 759. In this case, no confession was

introduced at all, let alone a confession describing several different crimes. Whether Brown possessed cocaine found in the house had nothing to do with whether she possessed cocaine in her pocket on the porch. Unlike *Neal*, discussion about the cocaine in the house was not necessary to prove whether there was cocaine in Brown's pocket.

Rather than telling a rational, coherent story, the evidence at issue here is a prime example of propensity evidence, evidence indicating the defendant had the inclination to commit the charged crime. The inference is that since Brown possessed cocaine in the house, she must have possessed cocaine on the porch. This is evidence that because Brown committed one crime, she must have committed another crime. About such evidence, the United States Supreme Court has said that "[a]lthough ... 'propensity evidence' is relevant, the risk that a jury will convict for crimes other than those charged-or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment-creates a prejudicial effect that outweighs ordinary relevance." *Old Chief v. U.S.*, 519 U.S. 172, 181 (1997), quoting *United States v. Moccia,* 681 F.2d 61, 63 (C.A.N.H. 1982).

In *Old Chief,* the Supreme Court has also noted that:

> Courts that follow the common-law tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. Not that the law invests the defendant with a presumption of good character, *Greer v. United States,* 245 U.S. 559, 38 S.Ct. 209, 62 L.Ed. 469, but it simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The state may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice." *Michelson v. United States,* 335 U.S. 469, 475-476, 69 S.Ct. 213, 218-219, 93 L.Ed. 168 (1948) (footnotes omitted).

519 U.S. at 180-181. *See also McFarland v. State,* 735 So.2d 1007, 1001 (Miss. 1999) (evidence regarding previous armed robbery charge for which defendant had been acquitted was unduly prejudicial in armed robbery prosecution).

REPLY ARGUMENT III

THE PROSECUTOR'S CAUSING BROWN TO BE SENTENCED TO MANDATORY LIFE BECAUSE SHE PLED NOT GUILTY AND WENT TO TRIAL, WHILE REDUCING THE CHARGE SO THAT THE IDENTICALLY SITUATED CO-DEFENDANT RECEIVED ONLY THE MANDATORY EIGHT YEARS' IMPRISONMENT, VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The State's brief is misleading as to the reasons why Brown received a mandatory life sentence, whereas a co-defendant received eight years. The State's brief indicates that Brown's sentence was the result of the trial judge's carefully considering Brown's extensive criminal record. See Appellee's Brief, p. 10, attributing Brown's sentence to the fact that she had "spent her entire life committing crimes against the State of Mississippi." In fact, the trial judge had no discretion as to Brown's sentence, and the sentence was based entirely upon factors dictated by the prosecutor. When Brown's identically situated co-defendant agreed to plead guilty, his indictment was amended so as to charge him under the less harsh Miss. Code Ann. § 99-19-81, providing only for the maximum sentence for possession of a small amount of cocaine. Because Brown refused to plead guilty, she was sentenced under the draconian Miss. Code Ann. § 99-19-83, which provides for life imprisonment when one of the multiple offenses of a habitual offender is a crime of violence.

Both Brown and her co-defendant were eligible for sentencing under the mandatory life provisions of Miss. Code Ann. § 99-19-83, and were also eligible for sentencing under the much less harsh provisions of Miss. Code Ann. § 99-19-81. The record contains no basis for why the prosecutor chose to prosecute Brown under the harsher statute, rather than the more lenient statute. The record contains absolutely no basis for why the prosecutor chose to prosecute the co-defendant under the less

harsh statute, rather than the mandatory life statute. Under this circumstance, the case must be remanded for a new sentencing hearing, where the circuit judge, applying the guidelines of *McGilvery v. State*, 497 So.2d 67 (Miss. 1986), should require defendant to be sentenced under the same statute as a co-defendant, unless the State, at a sentencing hearing, can demonstrate some reason for the disparity between the two defendants. *McGilvery* unequivocally holds that it is "absolutely impermissible that a trial judge imposing sentence enhance the sentence imposed because the defendant refused a plea bargain and put the state and the court to the trouble of trial by jury..." *McGilvery*, at 69. With this same identical rationale, it should be "absolutely impermissible" for the prosecutor to charge a defendant under a harsher statute, simply because that defendant has elected to plead not guilty and go to trial.

The equal protection clause of the Fourteenth Amendment requires that there be some rational basis for distinguishing between persons similarly situated. *See, e.g., Rolf v. City of Antonio*, 77 F.3d 823, 828 (5th Cir. 1996) ("Equal protection clause of Fourteenth Amendment is essentially mandate that all persons similarly situated must be treated alike."); *Hudson v. Palmer*, 468 U.S. 517, 523 (1984) (the equal protection clause of the Fourteenth Amendment requires inmates to be treated equally, unless unequal treatment bears a rational relation to a legitimate penal interest); *Stefanoff v. Hays County, Tex.*, 154 F.3d 523, 526 (5th Cir. 1998) ("Denial

of good time credit because inmate had been sentenced by jury, and not by judge," violates equal protection).

Certainly, a difference cannot be based upon one's exercise of a fundamental constitutional right, such as electing to go to trial. *See ,United States v. Jackson*, 390 U.S. 570, 581 (1968) (penalizing those who choose to exercise constitutional rights would be patently unconstitutional); *North Carolina v. Pearce,* 395 U.S. 711, 724-25 (1969) (to punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort); *Chaffin v. Stynchcombe*, 412 U.S. 17, 32-33, n. 20 (1973) (for an agent of the state to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is "patently unconstitutional").

While it is absolutely true, as the State's brief argues, that a judge may sentence a criminal defendant to any sentence within statutory guidelines, that does not diminish the right of a criminal defendant to be treated the same as those similarly situated. Cases holding that a sentence within statutory guidelines is permissible are not controlling, since they do not address the present issue of treating a criminal defendant differently, merely because that defendant has chosen to exercise her constitutional rights by going to trial.

Finally, the State notes that Brown did not bring this assignment of error to the attention of the trial court, and claims that it is, therefore, "waived." However, the issue in question is one which goes to the heart of basic constitutional fairness. A co-defendant, under identical circumstances, had received a sentence of eight years' imprisonment. Brown, merely because she exercised her constitutional right to go to trial, will spend her life in prison. The law which holds this impermissible was settled by the Mississippi Supreme Court in *McGilvery v. State*, 497 So.2d 67, 69 (Miss. 1986), and is entrenched by numerous other decisions. See Appellant's Brief, p. 45. Under these circumstances, this Court should hold the failure to treat the two identically-situated defendants the same is "plain error." Plain error is that error which "seriously affects the fairness, integrity or public reputation of judicial proceedings." *United States v. Olano,* 507 U.S. 725, 732-735 (1993); *Cox v. State,* 793 So.2d 591, 597 (Miss. 2001) ("To determine if plain error has occurred, this Court must determine if the trial court has deviated from a legal rule, whether that error is plain, clear or obvious, and whether the error has prejudiced the outcome of the trial").

CONCLUSION

The conviction should be reversed for a new trial. If not, it should be reversed for a re-sentencing hearing.

Respectfully Submitted,

WAIDE & ASSOCIATES, P.A.

BY: _____

JIM WAIDE
MS BAR NO.: 6857

WAIDE & ASSOCIATES, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 1357
TUPELO, MS 38802
662/842-7324 TELEPHONE
662/842-8056 FACSIMILE
EMAIL: WAIDE@WAIDELAW.COM

Attorneys for Appellant

MISSISSIPPI SUPREME COURT
MISSISSIPPI COURT OF APPEALS

NO. 2008-TS-00944

PATRICIA ANN BROWN

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF COMPLIANCE

Pursuant to Miss. R. Civ. P. 32, the undersigned certifies this brief complies with the type-volume limitations of Rule 32.

1. Exclusive of the exempted portions in Rule 32(c), the brief contains:

A. 4,805 words in proportionally spaced typeface.

2. The brief has been prepared:

A. In proportionally spaced typeface using WordPerfect 12.0 in Times New Roman, 14 point.

3. If the Court so requires, the undersigned will provide an electronic version of the brief and/or a copy of the word or line printout.

CERTIFICATE OF SERVICE

I, Jim Waide, attorney for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing, as well as a 3.5 WP Disk, to the following:

Clay Joyner, Esq.
Assistant District Attorney
P. O. Box 7237
Tupelo, MS 38802

Laura H. Tedder, Esq.
Special Assistant Attorney General
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205-0220

Honorable Thomas J. Gardner, III
Circuit Court Judge
P. O. Drawer 1100
Tupelo, MS 38802-1100

THIS the 3 day of April, 2009.

Jim Waide

JIM WAIDE

4. The undersigned understands a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in Rule 32, may result in the Court's striking the brief and imposing sanctions against the person signing the brief.

This, the 3 day of April, 2009.

BY: _____
JIM WAIDE
MS BAR NO.: [redacted]

WAIDE & ASSOCIATES, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 1357
TUPELO, MS 38802
662/842-7324 TELEPHONE
662/842-8056 FACSIMILE
EMAIL: WAIDE@WAIDELAW.COM

Attorneys for Plaintiff/Appellant