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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

KEIR D. SANDERS — APPELLANT

V. — NO. 2008-KA-1445-COA

STATE OF MISSISSIPPI — APPELLEE

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STATEMENT OF THE CASE

Keir D. Sanders (Sanders) was indicted for two counts of murder by a grand jury of Tishomingo County, Mississippi. (C.P. 8). Count I charged Sanders with the murder of his grandfather, W.D. Crawford, Jr. (W.D.), and Count II charged Sanders with the murder of his grandmother, Elma Lee Crawford (Elma). (C.P. 8). After a three-day jury trial held on May 20 to May 23, 2008, the Honorable Thomas J. Gardner, III, Circuit Judge, presiding, the jury found Sanders not guilty by reason of insanity on Count I and guilty of murder on Count II. (Tr. 873-74, C.P. 704-11, R.E. 11-14). The trial court entered a judgment of conviction, and Sanders was sentenced as a habitual offender under Mississippi Code Annotated Section 99-19-81 and ordered to serve a term of life imprisonment on Count II. (Tr. 880-82, C.P. 712-13, R.E. 15-17). As to Count I, the trial court ordered that Sanders be conveyed to and confined in the Mississippi State Hospital at Whitfield, Mississippi, until he has been restored to sanity. (Tr. 880-82, C.P. 712-13, R.E. 16-17). However, the trial court delayed or suspended Sanders' commitment to the State Hospital under Count I until his discharge from the custody of the Mississippi Department of Corrections under his life sentence under Count II. (Tr. 880-82, C.P. 712-13, R.E. 16-17). The trial court denied Sanders' motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. (C.P. 729, R.E. 18-25). Sanders now appeals to this honorable Court for relief.

STATEMENT OF THE FACTS

Overview

Keir Sanders has "had a destroyed life because of his mental illness." (Tr. 729). He was repeatedly institutionalized during his teenage years. (Tr. 518, 523, 529-30, 550, 558-59, 589, 608, Ex. D-38). At the age of fourteen (14), Sanders began exhibiting disturbingly bizarre behaviors, and he was diagnosed with paranoid schizophrenia and schizoaffective disorder by the age of eighteen

(18). (Tr. 517-25, 553-55, 595-97, 682, Ex. D-38). By this time, Sanders' parents could not control him, and he began staying primarily with his grandparents, W.D. and Elma (collectively "the Crawfords") at their house on Pickwick Lake. (Tr. 529-31, 534).

On December 29, 1985, when Sanders was approximately twenty-one (21) years old, authorities were dispatched to the Crawfords' house, where they discovered Elma lying on a couch suffering from a shotgun wound and W.D.'s lifeless body lying in the kitchen. (Tr. 367-71). W.D. was pronounced dead at the scene, and Elma was transported to the Iuka hospital, where she died approximately sixty-five days later. (Tr. 450-53, 459-62).

Twenty years later, Sanders was apprehended in San Antonio Texas, transported to the Tishomingo County Sheriff's Office, and indicted on two counts of murder. (Tr. 465-77, 494, C.P. 8). The case was first tried in Lafayette County, Mississippi, in February 2008; however, that trial resulted in a hung jury and a mistrial. (C.P. 543-44, R.E. 8-9). Thus, the trial subject to this appeal was Sanders' second trial.

At trial, the central issue was whether Sanders was legally insane at the time of the shootings. The jury heard much evidence regarding Sanders' extensive history of mental illness, including his diagnoses, his disturbing behaviors, his medication, and his periods of institutionalization. (See e.g., Tr. 518, 523, 529-30, 550, 558-59, 589-612, 687-90, Ex. D-38). Additionally, two expert witnesses testified that Sanders did not know the difference between right and wrong at the time of the incident, and he was, therefore, M'Naughton insane. (Tr. 610-12, 696-97). The State called one expert witness in rebuttal, who opined that Sanders did know the difference between right and wrong at the time of the shootings and was not insane. (Tr. 766-69).

During deliberation, the jury sent the following questions to the trial court:

What is the minimum sentence for someone that is found to be insane and a danger

to the public?

If the defendant is found 'not guilty' by reason of insanity but is a danger to the public [] will the defendant be allowed to ever walk as a free man on the street?

(Tr. 871-72, Ex. C-42, R.E. 10) (emphasis in original). The trial court responded: "I have read your notes asking questions which I am not permitted to answer. Please continue your deliberations." (Tr. 871-72, Ex. C-42). The jury then returned a bizarre verdict, finding Sanders not guilty by reason of insanity on Count I, yet guilty on Count II. (Tr. 872-74, C.P. 704-11, R.E. 11-14).

Background Facts and Sanders' History of Mental Illness

As a young child, Sanders was extremely intelligent and a little bit "withdrawn." (Tr. 520, 552-53, 567). In 1979, when Sanders was fourteen (14) years old, his mother, Jannie Hadley (Jannie), married Gerald Hadley (Gerald). (Tr. 517-18, 553-54). Jannie lived in close proximity to her parents, W.D. and Elma (collectively "the Crawfords"), and Sanders "bounced back and forth" between Jannie's home and the Crawfords' home. (Tr. 517, 520, 526, 556-57).

After Jannie's marriage to Gerald, Sanders began to change. (Tr. 517-18, 553-54). He would stay in his room with the door shut, would not bathe or comb his hair, and refused to use toiletries except for toothpaste. (Tr. 554, 592-93). He had little to no interaction with others and had no friends. (Tr. 519-20, 555-57). Sanders became hostile, and Jannie and Gerald were having trouble with him. (Tr. 529).

In 1981, Sanders was sent to Redemption Ranch–a boys detention center type institution. (Tr. 518, 529-30). However, he ran away from Redemption Ranch after eight months. (See Ex. D-38). Upon his return, Sanders condition was worse than before, and soon thereafter he quit or was expelled from school. (Tr. 519, 529-31). Jannie and Gerald could not control Sanders, who began staying primarily with the Crawford's at their house on Pickwick Lake. (Tr. 529-31, 534).

As his condition worsened, Sanders would contort his hands in bazaar positions and make grotesque faces. (Tr. 519, 554-55). Unable to hold utensils with his hands in these positions, he would scoop food into his mouth using his hands. (Tr. 519, 554-55). He would sleep on top of the covers fully clothed with his shoes on. (Tr. 593). Sanders was disoriented as to the date or even the month of the year. (Tr. 593). He did not like to look at himself, and he covered mirrors with blankets. (Tr. 518, 560, 592). He heard voices, and carried on conversations with himself, the covered mirrors, and/or persons who were not there. (Tr. 525, 554-55, 592). Sanders would often abruptly jump up, spin around, and bang his head on the wall to get the voices and bad thoughts out of his head. (Tr. 525-26, 555, 592). He burned Bibles because God had not answered his prayers. (Tr. 592).

Sanders had become very paranoid, and he believed others were watching him and talking about him. (Tr. 592). He also believed that people wanted to hurt him, "and he saw things that were not there." (Tr. 556). Sanders had also became very hostile. (Tr. 519, 523-24). Although he was respectful toward Gerald, Sanders screamed and cursed at Jannie frequently, and he was especially hostile toward W.D. (Tr. 523, 564). On at least one occasion, family menbers noticed bruises and/or a black eye on W.D, and they assumed that Sanders was the cause. (Tr. 523, 564).

On November 19, 1982, the Crawfords involuntarily committed Sanders (then eighteen (18) years old) to Mid-South Hospital (Mid-South) in Memphis, Tennessee, pursuant to a court-order, apparently resulting from a physical altercation with W.D. (Tr. 52-22, 558-59, 589, Ex. D-38). At Mid-South, Sanders received inpatient psychiatric treatment for approximately nine-and-a-half months. (Tr. 52-22, 558-59, Ex. D-38). He was diagnosed with schizophrenia, or schizoaffective disorder, and he was given several antipsychotic drugs. (Tr. 595-97, 682, Ex. D-38). In his Mid-South medical records, Sanders' condition was summarized as follows: "Keir exhibits signs of

psychosis, especially paranoia and disturbed thought processes. He is easily agitated and probably will be verbally and/or physically aggressive when stressed." (Ex. D-38).

Sanders was discharged from Mid-South in August 1983, after Gerald and Jannie's insurance policy had been expended; Sanders' bills from Mid-South amounted to about $400,000. (Tr. 535, 562-63, 575, 608). At trial, Dr. John McCoy, one of Sanders' treating psychiatrists at Mid-South, testified that Sanders showed little improvement at Mid-South, and, in his opinion, Sanders should not have been discharged. (Tr. 598-99). Similarly, Gerald testified that "he was just as bad, or probably worse" when he returned from Mid-South. (Tr. 559).

About six months later, on February 15, 1984, Sanders was again involuntarily committed, this time to the Mississippi State Hospital in Whitfield, Mississippi. (Tr. 608, Ex. D-38). There, Sanders was diagnosed as suffering from "Schizophrenia, undifferentiated, chronic." (Tr. 608, Ex. D-38).[1] He was given "superhuman" dosages of the antipsychotic drugs Hadol, Cogentin, and Thorozine. (Ex. D-38, Tr. 687). Sanders eloped about one month later; his discharge note from Whitfield stated: "We have recommended to his grandparents that he be brought back. She refused. We made a further recommendation that he go to the local mental health clinic for follow up care." (Ex. D-38). Sanders later received a disability evaluation by Dr. Mona Carlyle, who diagnosed Sanders with atypical psychosis; he apparently began receiving disability benefits based on this. (Tr. 689-90, 716, 756, 781, Ex-D-38).

Sanders' condition never got better after he came out of these mental institutions, and "if anything maybe he got worse as time went on." (Tr. 562). Sanders' Medical records indicate that

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At trial, Dr. McCoy testified that the difference in diagnoses of Schizoaffective disorder and Schizophrenia, undifferentiated, chronic lies in "technical details." (Tr. 608-09). Similarly, Dr. Mark Webb, testified that

he refused to take his prescribed medications. (Ex. D-38). As stated above, Sanders was very hostile, especially toward W.D. (Tr. 523, 564). On one occasion, Gerald called Sanders and warned that if [Sanders became violent with W.D.] again, he would administer some well-placed kicks to [Sanders'] rear end." (Tr. 564). Gerald also talked with W.D. about committing Sanders yet again for even further treatment, but W.D. said, "Gerald, there's no place for him to go. The boy is crazy." (Tr. 564). Two or three weeks before the incident at issue, Deputy Mike Kemp of the Tishomingo County Sheriff's Department was called to the Crawfords' cabin, and W.D. told him that "he was afraid of [K.D.], and he had a temper, and he couldn't control it." (Tr. 381, 390-91).

The Incident and Sanders' Arrest

At about 9:00 p.m. on December 29, 1985, authorities were dispatched to the Crawfords' house after Jannie reported that no one was answering the phone and she worried that Sanders may have harmed them. (Tr. 367). Deputy Kemp was the first to respond; he found Elma lying on the couch in the downstairs sunroom/den area. (Tr. 369). He asked Elma what happened, and she replied: "K.D. shot me." (Tr. 370). According to Deputy Kemp, Elma told him that W.D. and Sanders got into an argument around 7:30 a.m. that morning, and Sanders shot W.D., then shot her and left the house in the Crawfords' car. (Tr. 370). Elma also said that she tried to use the phone but it had been pulled from the wall. (Tr. 371). A phone was later discovered by or under the couch with the cord wrapped neatly around it. (Tr. 372-73, Ex. S-2). An ambulance transported Elma to the Iuka hospital. (Tr. 450, 461). She died on March 4, 1986 (approximately sixty-five (65) days later) of multiple complications from the shotgun wound and the resulting surgeries. (Tr. 453, 461).

W.D. was found lying on the floor in the kitchen; he was pronounced dead at the scene, and he appeared to have been beaten over the head and shot from behind with a shotgun. (Tr. 370, 397-

98, 430-31, 459, 462). Dr. Tom McLees performed an autopsy on W.D. (Ex. C-36).[2] He noted that W.D. had been shot from behind from some distance away and also suffered seven blows to the head with a blunt object. (Ex. C-36). Dr. McLees concluded that W.D.'s injuries from the shotgun were not fatal, and he died from hemorrhaging caused by the blows to his head. (Tr. 462, Ex. C-36).

A search of the cabin revealed two shotgun shells and two "waddings," one found in the kitchen, the other in an upstairs bedroom. (Tr. 433-35, Ex. S-21). There was a blood trail from the couch on which Elma was lying, into the kitchen area, up a small flight of steps, down a hallway, into a bedroom, and on to a bed. (Tr. 375-77, 396-98, 459). In the hallway, the words "K.D. shotgun" were written in blood, presumably by Elma. (Tr. 377, 398, 431, 459, Ex. S-16, S-17, S-18). A hammer was found deposited in a garbage can in the sunroom/den. (Tr. 425). At trial, the parties stipulated that the hammer had traces of human blood on it. (Tr. 435-37, Ex. S-22). The shotgun was never recovered. (Tr. 438).

Authorities began efforts to locate Sanders and/or the Crawfords' car. (Tr. 377-78). The Crawfords' car was found three or four days later in Memphis, Tennessee, in a Holiday Inn parking lot. (Tr. 438). However, the search for Sanders continued, and, over the years, warning posters were put out containing Sanders' picture and cautions such as:

> Diagnosed paranoid schizophrenic: mood swings, lithium prescribed, Mistakenly believes he is balding, does not like to be photographed, when stressed, left eye twitches, Sketches and paints Mickey Mouse, super heroes, Laurel and Hardy, Stays at shelters, Salvation Army missions.

(Ex. D-37, see also D-34, Tr. 384-86, 489).

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[2] At trial, Dr. Tom McLees' deposition testimony was read into evidence in lieu of his presence at trial; the transcript of Dr. McLees' deposition was marked as Court's Exhibit No. 36. (Tr. 456, Ex. C-36).

Sanders was located approximately twenty (20) years later, on December 1, 2005, when Officers of the San Antonio Police Department stopped him while he was walking down the sidewalk with another man whom the officers had stopped earlier that evening. (Tr. 465-470). Sanders provided the officers with two copies of his birth certificate. (Tr. 471-72, Ex. S-29, S-30). The officers discovered that Sanders was wanted for double murder in Mississippi, and they arrested him and notified the Tishomingo County Sheriff's Office. (Tr. 380, 472-74, 477). At the time of his arrest, Sanders was homeless, and from the record it appears that he had been meandering around Texas under various names including Robert Cecil Boatright, David Matthews, Donald Singleton, and David Montague Ford. (Tr. 480-83).

Sanders arrived at the Tishomingo County Sheriff's Office several days later, and Jannie visited him the following day. (Tr. 494). According to an eyewitness, Jannie and Sanders hugged; Sanders said, "I'm sorry, Mama. Please forgive me[;]" and Jannie said , "Forgive me." (Tr. 495-96). Sanders was indicted for two counts of murder; Count I charged Sanders with the murder of W.D., and Count II charged Sanders with the murder of Elma. (C.P. 8).

The Trial

At trial, the critical issue was whether Sanders was insane at the time of the shootings. The State's case-in-chief consisted of witness testimony and exhibits which, for the most part, pertained to the scene of the crime, the investigation, and Sanders' subsequent apprehension, as summarized above. (Tr. 355-497). The defense first called Jannie and Gerald, who testified in accordance with many of the facts discussed above. (Tr. 516-581).

The defense next called Dr. John McCoy , a psychiatrist, to testify as an expert witness. Dr. McCoy treated Sanders during his nine-and-a-half month institutionalization at Mid-South; when asked how he remembered Sanders after more than twenty years, Dr. McCoy responded:

> I don't think anybody that worked [at Mid-South] while [Sanders] was there will forget [him]. . . . He was the most mentally ill of all the patients in the hospital. He came in reporting bizarre symptoms. He was the sickest one that had been in that hospital in a long time.

(Tr. 591). Dr. McCoy recalled that Sanders changed the pitch of his voice up and down during his intake interview. (Tr. 592). Dr. McCoy also testified as to Sanders' bizarre symptoms (discussed above) including, but not limited to his: (1) burning of bibles, (2) covering of mirrors, (3) conversations with himself or someone who was not there, (4) head-shaking to get out bad thoughts, (5) lack of personal hygiene, (6) paranoia and belief that everyone was watching him, talking bad about him, and wanting to harm him, (7) sleeping on top of the bed with shoes on, and (8) disorientation as to the date or month of the year. (Tr. 592-93).

Dr. McCoy testified that Sanders heard voices and saw things (hallucinations), and he "believed that people were trying to kill him." (Tr. 594). He also stated that Sanders was unpredictable and violent, frequently requiring forceful restraint. (Tr. 594). Dr. McCoy testified that Sanders suffered from delusions of persecution, i.e, the false belief that everyone wanted to hurt him and would if given the chance. (Tr. 595). As stated above, the doctors at Mid-South diagnosed Sanders with schizophrenia and/or Schizoaffective disorder, and Sanders was given several antipsychotic drugs.[3] (Tr. 595-97). Dr. McCoy recalled that Sanders showed little improvement at Mid-South and, in his opinion, Sanders should not have been discharged. (Tr. 598-99).

Dr. McCoy also testified that any drug and/or alcohol use by Sanders did not play a significant part in Sanders' condition, "in fact, probably not a part at all."[4] (Tr. 600-602). To this

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[3] Schizoaffective disorder is essentially a combination of both schizophrenia and bipolar disorder. (Tr. 597-98).

[4] Medical records from Mid-South and other institutions contain(ed) notations that Sanders

end, Dr. McCoy explained that mental problems caused by drug and/or alcohol abuse clear up in the hospital very quickly, "in a couple of days" and sometimes "as long as two weeks." (Tr. 601). Because Sanders received continuous inpatient care at Mid-South for nine-and-a-half months yet showed no real improvement, Dr. McCoy opined that drug and/or alcohol use was not the cause of Sanders' problems. (Tr. 600-02).

Ultimately, Dr. McCoy testified that, at the time of the murders, Sanders was suffering from a defect of reason from disease of the mind, and although Sanders knew the nature of quality of his acts, he did not know that what he was doing was wrong. (Tr. 610-12). Accordingly, Dr. McCoy testified that Sanders was M'Naughton insane at the time of the shootings.

Dr. Mark Webb also testified for the defense as an expert witness. (Tr. 676). Dr. Webb examined Sanders in December 2007, and also reviewed Sanders' voluminous medical records. (Tr. 678-79). Dr. Webb had previously testified in approximately twenty-five trials on the issue of insanity and evaluated hundreds of other defendants on the issue, yet Sanders' case was only the second or third time that he had testified that a defendant was M'Naughton insane. (Tr. 695).

Dr. Webb noted Sanders' extreme paranoia: "He's paranoid, thought people were trying to kill him, thought people were after him." (Tr. 681). He also explained that "the worse [a patient's mental illness] is, the more medicine you need[,]" and he noted that Sanders received "superhuman" doses of antipsychotic drugs while at Whitfield. (Tr. 686-87). Dr. Webb testified as to Sanders' delusions:

> [He was] very paranoid. Again, thinking his grandparents were out to kill him. Thinking that other people were out to kill him, other - - everybody was out to kill him. He was pretty much a recluse.

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used various drugs. (See Ex. D-38). There was also some testimony that suggested that Sanders used drugs. (Tr. 359, 563).

(Tr. 693).

Like Dr. McCoy, Dr. Webb opined that, at the time of the shootings, Sanders was suffering under a defect of reason from a disease of the mind, and although he knew the nature and quality of his acts, he did not know what he was doing was wrong. (Tr. 696-97). In this regard, Dr. Webb again explained that Sanders was delusional, and believed that his grandparents "were going to poison him and kill him." (Tr. 697). Like Dr. McCoy, Dr. Webb testified that Sanders drug and/or alcohol use was not the source of his mental health problems, explaining that the fact that Sanders spent nine-and-a-half months at Mid-South but was still sick dispelled the proposition. (Tr. 684, 693-94).[5]

The State called Dr. Criss Lott as a rebuttal witness; Dr. Lott examined Sanders for about two hours in March 2007. (Tr. 745, 792). Dr. Lott somewhat hesitantly admitted that Sanders was suffering from a severe mental illness at the time of the shootings:

> He was reporting psychotic symptoms prior to [the shootings]. There was a history of it. He indicated that he felt paranoid. And so having not been there, its difficult to say exactly what was happening. So based on what he's telling me, I'm saying, Okay, that's certainly possible that he was suffering from a severe mental illness at the time of the alleged offense. . . .

(Tr. 766). The apparent reason for Dr. Lott's reservation became apparent during cross-examination, when he revealed his belief that Sanders' "mental illness may have been due to either schizophrenia, or it may have been the product of drug use." (Tr. 773, 788-89).

Dr. Lott went on to testify as to his opinion that, at the time of the shootings, Sanders knew

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[5] Like Dr. McCoy, Dr. Webb testified: "If it was drugs and alcohol, ten days, two weeks he would have been fine, he would have been good, if there were no drugs, no alcohol [at the treatment facility]. Nine and a half months, he was still sick, it's not drugs and alcohol." (Tr. 684).

the nature and quality of his actions and also knew the difference between right and wrong. (Tr. 766-69). Dr. Lott's conclusion that Sanders knew right from wrong was based on the evidence indicating that Sanders allegedly pulled the phone from the wall, left the Crawfords' house, and used aliases during his time in Texas. (Tr. 766-69). The record also indicates that Dr. Lott's opinion was based in large part on his suspicion that Sanders was not genuinely mentally ill, but just a drug user. (Tr. 788-89). However, when asked whether he could testify to a reasonable degree of medical certainty that drug use played a significant part in Sanders' condition at the time of the shootings, Dr. Lott repeatedly admitted, that he could not. (Tr. 775, 776, 789).[6]

Confusingly, Dr. Lott claimed that Sanders "was not mentally ill" at the time he examined him, but he also testified that he tested Sanders for malingering, i.e, faking or reporting false symptoms, and he did not believe that Sanders was faking his mental illness. (Tr. 747-49). Dr. Lott also testified that if a chronic schizophrenic stops taking his or her medication, they will revert to being psychotic "within a very short period of time." (Tr. 755). He further acknowledged that, according to medical records (and referring to an exhibit prepared by the State), Sanders had been off of his medication for some time before the shootings. (Tr. 762, Ex. S-33).

During deliberation, the jury sent the following questions to the trial court:

> What is the minimum sentence for someone that is found to be insane and a danger to the public?
>
> If the defendant is found 'not guilty' by reason of insanity <u>but</u> is a danger to the

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Also, on the issue of drug use, Dr. Lott previously testified on direct examination that drug use does not cause schizophrenia or schizoaffective disorder, but it can cause people to become "extremely delusional and psychotic." (Tr. 753). He also testified that drug use by a person with a mental illness such as schizophrenia (which has symptoms of paranoia and aggressiveness) "clearly would exacerbate and worsen an individuals problems." (Tr. 754).

public [] will the defendant be allowed to ever walk as a free man on the street? (Tr. 871-72, Ex. C-42, R.E. 10) (emphasis in original). The trial court responded: "I have read your notes asking questions which I am not permitted to answer. Please continue your deliberations." (Tr. 871-72, Ex. C-42). The jury then returned a bizarre verdict, finding Sanders not guilty by reason of insanity on Count I, yet guilty on Count II. (Tr. 872-74, R.E. 11-14).

SUMMARY OF THE ARGUMENT

The verdict was against the overwhelming weight of the evidence, and the trial court erred in denying Sanders' motion for a new trial. By far, the most troubling aspect of this case is the jury's inconsistent verdict, by which the jury essentially determined that Sanders was both sane and insane at insane at the time of the shootings! The jury heard extensive testimony concerning Sanders' diagnoses as a schizophrenic, his repeated institutionalizations, and his paranoid beliefs that ultimately resulted in the incident. Also, two experts, Dr. McCoy (who treated Sanders for nine-and-a-half months) and Dr. Webb, testified that Sanders was insane at the time of the incident. The State only presented the testimony of one witness, Dr. Lott, who opined that Sanders was not insane. However, Dr. Lott's opinion was based in large part on his suspicion that Sanders condition was caused by drug and alcohol use, not schizophrenia, and Dr. Lott repeatedly admitted that he could not testify to a reasonable degree of medical certainty that drug use played an important part in Sanders' condition at the time of the shootings. Furthermore, from the question the jury sent to the trial court during deliberations, it is clear that jury chose to find Sanders guilty on Count II, not based on the evidence, but to ensure that he would never walk the street as a free man. Therefore it is clear that the jury's reached a verdict out of bias, passion, or prejudice, not according to law as it was instructed. To allow the jury's verdict to stand would sanction an unconscionable injustice; therefore, Sanders is entitled to a new trial on Count II.

Also, the trial court erred in granting the State's jury instruction on flight. The defense rebutted the reason for Sanders flight by explaining that he left the scene as the result of his delusional fears that someone would kill him, and in his mind, he was running for his life. Because there was an independent reason for Sanders' flight, the trial court erred in giving the instruction. Therefore, Sanders is entitled to a new trial.

Additionally, the trial court erred in admitting gruesome autopsy photographs of W.D. and allowing the State to project them onto a large projection screen. The defense did not contest the fact that W.D. was injured, the manner in which he was injured, the extent of his injuries, or the fact that he dies as a result of those injuries. Further, the defense did not contest Sanders' identity, and his entire defense was that he was insane at the time of the incident. Beyond all this, other photos were introduced into evidence that showed W.D.'s body at the scene, and the State introduced a diagram/drawing that demonstrated W.D.'s injuries. Thus, the autopsy photos had extremely little, if any, probative value, which was clearly substantially outweighed by the unfair prejudice caused by the jury's viewing of the photos.

Finally, the trial court erred in ordering that Sanders' commitment to a state asylum under Count I be delayed or suspended unless and until Sanders was released from the custody of the Mississippi Department of Corrections on his life sentence pursuant to his conviction on Count II. Mississippi Code Annotated Section 99-13-7(1) mandates that the trial court order a defendant to be conveyed to and confined in a state asylum when, as here, a jury finds the defendant not guilty by reason if insanity and certified that he is still insane and dangerous. Therefore, should this Court affirm the issues related to the guilt phase of Sanders' trial, this case should be remanded with instructions that Sanders be conveyed to a state asylum until he is restored to reason as provided in Section 99-13-7(1).

ARGUMENT

I. THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE, AND THE TRIAL COURT ERRED IN DENYING SANDERS' MOTION FOR A NEW TRIAL.

The jury found Sanders not guilty by reason of insanity on Count I, yet guilty of murder on Count II. Because W.D.'s death and Elma's shooting occurred within a matter of minutes, the jury essentially determined that, at the time of the shootings, Sanders was both sane and insane! This incredible verdict is hopelessly inconsistent both logically and legally. Based on the jury's question to the trial court, the verdict was clearly the result of compromise. Clearly, the jury believed that Sanders was insane but was not comfortable finding him insane on both counts with uncertainty as to whether Sanders would ever "walk the street as free man" if he was found not guilty by reason of insanity on both counts. After receiving the trial court's non-responsive note, the jury chose to convict Sanders on one count, not on the evidence (which overwhelmingly showed that Sanders was insane at the time of the incident) but, rather, to ease their concerns as to his disposition or punishment.

While a jury verdict cannot be reviewed solely on the basis that it is inconsistent, an inconsistent jury verdict is properly reviewed under a challenge to the sufficiency and/or the overwhelming weight of the evidence. *Edwards v. State*, 797 So. 2d 1049, 1057-58 (¶¶24-25) (Miss. Ct. App. 2001) (citing *United States v. Powell*, 469 U.S. 57, 65, 105 S.Ct. 471 (1984)).

In reviewing a challenge to the weight of the evidence, the verdict will be only be disturbed "when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush v. State*, 895 So. 2d 836, 844 (Miss. 2005). The evidence is viewed in the light most favorable to the verdict. *Id.* (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss.1997)). This Court "sits as a hypothetical thirteenth juror." *Lamar v. State*, 983

So. 2d 364, 367 (¶5) (Miss. Ct. App. 2008) (citing *Bush*, 895 So. 2d at 844 (¶18)). "If, in this position, the Court disagrees with the verdict of the jury, 'the proper remedy is to grant a new trial.'" *Id.*

Under Mississippi law, the defense of insanity is evaluated under the M'Naghten test. *Hawthorne v. State*, 883 So. 2d 86, 89 (¶9) (Miss. 2004) (citing *Woodham v. State*, 800 So. 2d 1148, 1158 (Miss. 2001)). Under M'Naghten, a defendant is insane if, at the time of committing the act, the defendant "was laboring under such defect of reason from disease of the mind as (1) not to know the nature and quality of the act he was doing or (2) if he did know it, that he did not know that what he was doing was wrong." *Id.* Under this test, the critical inquiry is "whether the defendant did not know right from wrong at the time of committing the act." *Id.*

A defendant is presumed sane until a reasonable doubt is raised concerning his sanity. *Hawthorne*, 883 So. 2d at 89 (¶9) (citing *Taylor v. State*, 795 So. 2d 512, 517 (Miss. 2001)). "When such doubt is raised, the State bears the burden of proving the defendant's sanity beyond a reasonable doubt. *Id.* Whether a defendant is insane is a determination for the jury, "which may accept or reject expert and lay testimony." *Id.* (citing *Tyler v. State*, 618 So. 2d 1306, 1309 (Miss. 1993)); see also *Groseclose v. State*, 440 So. 2d 297 (Miss. 1983) ("Psychiatric and psychological expert witness testimony, while admissible and indeed quite desirable, is not the last word. Lay testimony has long been recognized as being equally admissible and useful where the insanity defense is tendered.").

The Mississippi Supreme Court has, on several occasions, reversed a jury verdict of guilty on the issue of insanity based on the sufficiency or overwhelming weight of evidence. *See, e.g.*, *Hawthorne*, 883 So. 2d at 89-90 (¶¶8-13); *Holloway v. State*, 312 So. 2d 700 (Miss. 1975); *Gambrell v. State*, 120 So. 2d 758 (Miss. 1960).

In *Hawthorne v. State*, the defendant was charged with manslaughter after he ran a red light,

and killed the passenger of a car with which he collided. *Hawthorne*, 883 So. 2d at 87-88 (¶¶1-5). Hawthorne fled from the scene on foot, and police apprehended him a short time later. *Id.* At trial, evidence was adduced that, about a week or two before the incident, the defendant began having what he believed to be "religious experiences" which led him to believe that, at the time of the incident, he was driving to Virginia in God's truck to deliver a cross to his sister, which would cure her of cancer, and he was in a hurry to return home before the world ended. *Id.* He also believed that God would guide the truck safely past any obstacles. *Id.* Several expert witnesses that treated the defendant after the offense testified that he was M'Naughton insane; the State did not present an expert witness. *Id.* at 88 (¶6). The jury found the defendant guilty. *Id.*

On appeal, this Court reversed and rendered, finding that the State presented insufficient evidence to prove that the defendant was sane. *Hawthorne v. State*, 881 So. 2d 234, 237-39 (¶¶5-13) (Miss. Ct. App. 2003). On writ of certiorari, the Mississippi Supreme Court disagreed that the verdict was not supported by sufficient evidence, pointing to evidence that the defendant had avoided may other "barriers" before the wreck, and, after the collision, he got out of his vehicle, looked around, and fled the scene. *Hawthorne*, 883 So. 2d at 89-90 (¶¶8-13). The court determined that this evidence indicated that the defendant knew right from wrong and was sufficient to support his conviction. *Id.* at 90 (¶10).

However, the court held that the verdict was against the overwhelming weight of the evidence. *Id.* at 89-90 (¶¶11-13). In so doing, the court pointed to evidence of the defendant's bizarre behaviors and beliefs (discussed above) and noted that mental illnesses, such as schizophrenia, ran in his family. *Id.* at (¶11). The court noted that four medical experts testified that the defendant did not know right from wrong at the time of the wreck. *Id.* at (¶12). The court also relied on the fact that the defendant's flight was rebutted by explaining that the reason the defendant

fled was to complete his mission to rid his sister of cancer. *Id.* Accordingly, the court reversed and remanded the case for a new trial. *Id.* at (¶13).

In the instant case, the evidence adduced at trial showing that Sanders was insane at the time of the incident was at least as overwhelming as the evidence before the jury in *Hawthorne*. In *Hawthorne*, the defendant had no prior diagnoses of mental illness, only than the fact that schizophrenia ran in his family. Whereas, Sanders was diagnosed with paranoid schizophrenia and/or schizoaffective disorder at the age of eighteen (several years before the incident), had a history of bizarre behavior, and had been institutionalized on multiple occasions over the years leading up to the incident. (Tr. 517-25, 529-30, 550-55, 558-59, 589, 595-97, 608, 682, Ex. D-38). Also, Sanders had exhibited much more disturbing behaviors. In this regard, the jury was presented with much testimony from both lay and expert witnesses, including, but not limited to the following:

> (1) He contorted his hands in bizarre positions and made grotesque faces (Tr. 519, 554-55);
>
> (2) He would not look at himself, and he covered and broke mirrors (Tr. 518, 560, 592);
>
> (3) He suffered from hallucinations that caused hm to hear voices, and carry on conversations with himself, the covered mirrors, and/or persons who were not there (Tr. 525, 554-55, 592-94);
>
> (4) He often spun around and banged his head on the wall to get the voices and bad thoughts out of his head (Tr. 525-26, 555, 592);
>
> (5) He burned Bibles (Tr. 592);
>
> (6) He was extremely paranoid, and suffered from delusions that caused him to believe others were watching him, talking about him, and wanted to kill him, including his grandparents. (Tr. 556, 592-94, 693).

Also, the doctors who testified in *Hawthorne*, only had the benefit of examining the defendant *after* the offense and only for several hours; whereas, the jury in Sanders' case had the

benefit of hearing testimony from Dr. McCoy who diagnosed Sanders and treated him for nine-and-a-half months at Mid-South, prior to the incident. (Tr. 591-612).

Finally, in *Hawthorne*, the defendant's flight was rebutted by explaining that the defendant fled in order to complete his delusional mission to rid his sister of cancer. Similarly, Sanders' flight was rebutted by explaining that he left the Crawford's house because of his paranoid delusions that persons or other forces (demons) would kill him: "In his mind he was running for his life." (Tr. 612; see also Tr. 699).

The only evidence that the State presented that tended to establish that Sanders was sane, was that the phone was pulled from the wall of the Crawford's cabin, Sanders left the scene (presumably with the shotgun), and he allegedly used aliases in Texas until his apprehension. Dr. Lott's opinion that Sanders was sane at the time of the incident was based, in part, on this evidence. To this end, it is significant that the hammer Sanders allegedly used to kill W.D. was found in garbage can in the Crawford's house; this act is not consistent with the State's theory that Sanders was concealing his acts or fleeing the scene due to a consciousness of guilt.

Dr. Lott's opinion was also based in large part on his belief that Sanders' condition was caused, not by schizophrenia, but by drug and/or alcohol use. (Tr. 788-89). However, Dr. Lott repeatedly admitted that he could not testify to a reasonable degree of medical certainty that drug an/or alcohol use played an important part in Sanders' condition at the time of the shootings. (Tr. 775, 776, 789). Further, both Dr. McCoy and Dr. Webb testified that drugs and/or alcohol did not contribute to Sanders' condition in any significant way. (Tr. 600-02, 684, 693-94). Therefore, the State's evidence as to Sanders' sanity was very weak.

The evidence showing that Sanders was insane at the time of the shootings was overwhelming. The jury heard an enormous amount of testimony pertaining to Sanders' history of

severe mental illness, his disturbing behaviors, beliefs, and/or symptoms caused as a result of his illness, and his unsuccessful treatments and institutionalizations. The jury also had the benefit of hearing the expert testimony of Dr. McCoy, who treated Sanders for nine-and-a-half months (just a couple years prior to the incident). In fact, the State's witness, Dr. Lott, admitted that Dr. McCoy was in a better position to understand Sanders' condition at the time of the incident, due to close proximity in time of his (Dr. McCoy's) treatment of Sanders and the incident, as compared to Dr. Lott's evaluation of Sanders over twenty years after the incident. (Tr. 786). Dr. McCoy explained how Sanders' mental illness caused him to not know the difference between right and wrong at the time of the incident, as did Dr. Webb.

Accordingly, the jury's verdict was against the overwhelming weight of the evidence, which showed that Sanders was insane at the time of the incident, and this Court would sanction and unconscionable injustice if it were to allow the jury's verdict to stand.

Additionally, the jury's question(s) sent during deliberation, further demonstrate the injustice that would occur were Sanders' conviction on Count II affirmed. (R.E. 10). In light of the overwhelming weight of evidence showing that Sanders was insane, and because W.D's killing and Elma's shooting occurred within in a matter of minutes, the jury's note clearly evinces that the jury chose to convict Sanders on one of the two counts, not based on the evidence, but in order to ensure that he would never "be able to walk as a free man." Thus, the jury failed to follow the instructions given, and the verdict returned was clearly the result of bias, passion, or prejudice on the jury's part.

The jury's verdict was against the overwhelming weight of the evidence, and was the result of bias, passion, or prejudice, not based on the evidence presented at trial. Consequently, allowing the jury's verdict to stand would sanction and unconscionable injustice, and Sanders is entitled to a new trial on Count II.

II. THE TRIAL COURT ERRED IN GIVING THE STATE'S JURY INSTRUCTION ON FLIGHT, AS THE DEFENSE PROVIDED AN INDEPENDENT REASON FOR SANDERS' FLIGHT.

At trial, the State submitted jury instruction P-4, an instruction on flight which read as follows:

> The Court instructs the jury that flight is a circumstance from which guilty knowledge and fear may be inferred. If you find from the evidence in this case beyond a reasonable doubt, that the defendant, Keir D. Sanders, did flee from the scene of the death of W.D. Crawford, Jr. and the shooting of Elma Lee Crawford, then the flight of Keir D. Sanders may be considered in connection with all other evidence in this case. You may determine from all of the facts whether the flight was from a conscious sense of guilt or whether it was caused by other things, and give it such weight as you think it is entitled to in reaching verdicts in this case.

(Tr. 820, C.P. 689). Defense counsel objected that Dr. Webb and Dr. McCoy rebutted Sanders' flight and provided a basis for his fleeing. (Tr. 820). However, the trial court gave the instruction. (Tr. 820).

Under Mississippi Law, "an instruction that flight may be considered as a circumstance of guilt or guilty knowledge is appropriate only where that flight is unexplained and somehow probative of guilt or guilty knowledge." *Fuselier v. State*, 702 So. 2d 388, 390 (¶4) (Miss. 1997) (citing *Reynolds v. State*, 658 So.2d 852, 856 (Miss.1995)). A flight instruction is also improper "when the evidence of flight is probative of things other than guilt or guilty knowledge of the crime charged." *Amos v. State*, 911 So. 2d 644, 654 (¶31) (Miss. Ct. App. 2005) (citing *Fuselier v. State*, 702 So. 2d 388, 391 (Miss. 1997)). Thus, it is error to allow the State to instruct or offer evidence of flight when the defendant has an independent reason for fleeing. See *Shaw v. State*, 915 So. 2d 442, 448 (¶¶19-22) (Miss. 2005) (error to admit evidence of flight where defendant gave independent reason that he was trying to escape from lawful confinement); *Fuselier v. State*, 702 So.2d at 390-91 (defendant was fleeing because he was an escapee); *Mack v. State*, 650 So.2d 1289, 1308-09

(Miss.1994) (defendant was fleeing because he was an escapee and he was driving a stolen truck).

In the instant case, the defense provided an independant reason for Sanders' flight. Dr. McCoy and Dr. Webb both explained that Sanders fled the scene under the delusion that he was still in danger. (Tr. 612, 699). To this end, Dr. McCoy was asked about Sanders' flight, and he responded: All of this is happening [Sanders is hearing voices and there are demons present in the house], he was running - - in his mind he was running for his life." (Tr. 612). Similarly, Dr. Webb stated: "I think he's scared of his thoughts . . . He's scared somebody is going to shoot him." (Tr. 699).

In *Hawthorne v. State*, the court stated the following regarding the defendant's flight:

> The fact that Hawthorne ran from the scene was also rebutted by the defense. According to the defense, Hawthorne ran from the scene because he was still under the delusion that he had to get back to Virginia to cure his wife, deliver the cross to his daughter, and be home when the world ended.

Hawthorne, 883 So. 2d at 90 (¶12). As in *Hawthorne*, the defense in the instant case explained that Sanders fled the scene due to his delusions that he was not safe. It is acknowledged that the *Hawthorne* court was not presented with the issue of the propriety of a flight instructions or evidence. However, it is significant that the court found this point so significant so as to include it as a reason justifying its decision. Sanders submits that, had the *Hawthorne* court addressed an issue pertaining to a flight instruction, it appears likely that it would have found the defendant's explanation sufficient as an independent explanation of flight.

Because Sanders provided an independent reason for his flight, the trial court abused its discretion in giving the State's flight instruction. Accordingly, Sanders is entitled to a new trial on Count II.

III. THE TRIAL COURT ERRED IN ADMITTING GRUESOME AUTOPSY PHOTOGRAPHS (EXHIBITS S-24, S-25, S-26) INTO EVIDENCE.

At trial, the State sought to introduce gruesome photographs from W.D.'s autopsy (Exhibits S-24, S-25, and S-26), during the testimony of Dr. McLees, who performed the autopsy on W.D. (Tr. 442-448, Ex. S-24, S-25, S-26). The State further sought to utilize a large projection screen to display these gruesome photos to jury in magnified form. (Tr. 442-448).

Defense counsel objected and argued that the photos had no probative value and served no purpose but to inflame the passions of the jury. (Tr. 442- 448). Defense counsel explained that Sanders was not contesting the fact or manner in which W.D. was injured, or the fact that W.D died from the injuries. (Tr. 446). It was also pointed out that Dr. McLees would testify as to the autopsy that he performed on W.D., and the results of the autopsy. (Tr. 446). Defense counsel also pointed out that blowing the disturbing photos up on the projection screen would magnify the gruesomeness of the photos and their inflammatory effect on the jury. (Tr. 446-47).

The trial court concluded that the photos had "evidentiary value in demonstrating very clearly for the jury what the injuries sustained by [W.D.] were, the shot and bludgeoned [sic]." (Tr. 448). It further determined that the photos' probative value outweighed any possible prejudicial effect. (Tr. 448). The trial court found that the State's use of the projection screen would be "utilitarian and sufficient" in displaying the gruesome photos to the jury. (Tr. 448). Consequently, the trial court overruled the objection and allowed Exhibits S-24, S-25, and S-26 to be received into evidence and displayed to the jury in magnified form on the large projection screen. (Tr. 448).

A trial court's decision to admit photographs into evidence will not be reversed unless the trial court abused its discretion. *Sharp v. State*, 446 So. 2d 1008, 1009 (Miss. 1984). "If photographs are relevant, the mere fact that they are unpleasant or gruesome is no bar to their

admission in evidence." *Davis v. State*, 551 So. 2d 165, 173 (Miss. 1989) (citing *Boyd v. State*, 523 So. 2d 1037, 1040 (Miss. 1988)). "However, photographs of the victim should not ordinarily be admitted into evidence where the killing is not contradicted or denied, and the corpus delicti and the identity of the deceased have been established. *Id.* (citing *Shearer v. State*, 423 So. 2d 824, 827 (Miss. 1982); *Sharp v. State*, 446 So. 2d 1008, 1009 (Miss. 1984)). And "photographs which are gruesome or inflammatory and lack an evidentiary purpose are always inadmissible as evidence." *McNeal v. State*, 551 So. 2d 151, 159 (Miss. 1989) (citing *McFee v. State*, 511 So. 2d 130, 135 (Miss. 1987)). "When considering admissibility, a court must also consider whether the proof is absolute or in doubt as to the identity of the guilty party, and whether the photographs are necessary evidence or simply a ploy on the part of the prosecutor to arouse the passion and prejudice of the jury. *Sitton v. State*, 760 So. 2d 28, 30 (¶12) (Miss. Ct. App. 1999) (citing *McNeal*, 551 So. 2d at 159 (Miss. 1989); *Williams v. State*, 544 So. 2d 782, 785 (Miss.1987))

At trial, the defense stipulated to the fact that W.D. was killed (Tr. 43), and, throughout the course of the trial, the defense did not contest the manner in which he was injured, the nature of his injuries, or the cause of his death; the State's proof as to these matters was absolute. Also, other photographs depicting the crime scene and W.D.'s body were introduced into evidence, and several witnesses testified as to W.D.'s injuries and the cause of his death. (Tr. 370, 397-98, 430-31, 459, 462, Ex. C-36, Ex. S-3, Ex. S-10). Additionally, a drawing or diagram demonstrating W.D.'s injuries was introduced into evidence. (Ex. S-23). Although there was no stipulation that it was in fact Sanders who killed Elma and W.D., the defense did not contest Sanders' identity, and his entire theory of defense was that he was insane at the time of the shootings.

Accordingly, these photographs were in no any way necessary evidence; instead the State's attempt to introduce these photographs was a ploy of the to arouse and inflame the passions of the

jury, as demonstrated by the State's desire to display the autopsy photos onto a large projection screen. If the photos had any probative value, it would be substantially outweighed by the danger of unfair prejudice. Therefore, the trial court abused its discretion in admitting Exhibits S-24, S-25, and S-26, and Sanders is entitled to a new trial on Count II.

IV. THE TRIAL COURT ERRED IN ORDERING SANDERS TO SERVE HIS SENTENCE OF INCARCERATION PURSUANT TO COUNT II BEFORE SANDERS COULD BE CONVEYED TO THE STATE MENTAL HOSPITAL PURSUANT TO COUNT I.

The jury found Sanders not guilty by reason of insanity on Count I and also found that he had not been restored to reason and was a danger to the community; the jury found Sanders guilty of murder on Count II. On Count I, the trial court ordered that Sanders be conveyed to and confined in the Mississippi State Hospital. (Tr. 880-82, C.P. 712-13, R.E. 15-17). On Count II, the trial court sentenced Sanders, as a habitual offender under Mississippi Code Annotated Section 99-18-81, to serve a term of life in the custody of the Mississippi Department of Corrections ("MDOC"). (Tr. 880-82, C.P. 712-13, R.E. 15-17). The trial court further ordered the "sentences" to run consecutively and that Sanders conveyance to and confinement in the Mississippi State Hospital under Count I shall be suspended or delayed until, if for any reason, Sanders is released from the custody of the MDOC on his life sentence under Count II. For the reasons explained below, this was error. (Tr. 880-82, C.P. 712-13, R.E. 15-17).

"Sentencing is generally within the sound discretion of the trial judge and the trial judge's decision will not be disturbed on appeal if the sentence is within the term provided by statute." *Bell v. State*, 769 So. 2d 247, 251 (¶9) (Miss. Ct. App.2000) (citing *Davis v. State*, 724 So. 2d 342 (¶10) (Miss. 1998)).

The duties of the trial judge and the jury concerning a defendant found not guilty by reason

of insanity are prescribed in Mississippi Code Annotated Section 99-13-7, which provides:

> When any person shall be indicted for an offense and acquitted on the ground of insanity the jury rendering the verdict shall state therein such ground and whether the accused has since been restored to his reason, and whether he is dangerous to the community. And if the jury certify that such person is still insane and dangerous the judge shall order him to be conveyed to and confined in one of the state asylums for the insane.

Miss. Code Ann. § 99-13-7 (1972). The plain language of this statute mandates that, when a defendant is found not guilty by reason of insanity and the jury finds him to still be insane and dangerous, "the judge *shall* order him to be conveyed to and confined in one of the state asylums for the insane." *Id.* (emphasis added).

In the instant case, the jury, on Count I, found Sanders not guilty by reason of insanity and certified that he was still insane and dangerous to the community. Accordingly, the trial court was statutorily mandated to order Sanders conveyed to and confined in a state asylum for the insane–the Mississippi State Hospital at Whitfield.

It is acknowledged that the trial court did technically order Sanders to be conveyed to the Mississippi State Hospital. It is further acknowledged that Mississippi Code Annotated Section 99-19-21(1) gives the trial court discretion to order multiple sentences to run consecutively. Specifically, that statute provides:

> (1) When a person is *sentenced to imprisonment* on two (2) or more *convictions*, the imprisonment on second, or each subsequent conviction shall, in the discretion of the court, commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction.

Miss. Code Ann § 99-19-21 (Rev. 2007). However, Section 99-19-21(1) does not apply in this situation because Sanders was not "*sentenced* to *imprisonment* on two (2) or more *convictions*. . . ." *Id.* (emphasis added). Instead, Sanders was sentenced to imprisonment on only one conviction. Therefore, Section 99-13-7 should apply, and in this situation, should require the trial court to order

that Sanders first be committed to and confined in a state asylum for the insane so that he may receive treatment for his mental illness as clearly intended by the statute.

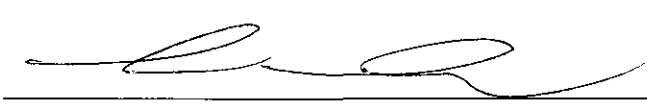
Support for this result is found in other statutes dealing with persons with mental illness which inherently demonstrate that the legislature intends and favors a policy that one not be punished while he is insane. *See, e.g,* Miss. Code Ann. §99-13-3; Miss. Code Ann. §99-13-5; Miss. Code Ann. § 99-13-11; Miss. Code Ann. § 99-19-57. Accordingly, this case should be remanded for re-sentencing, with instructions that the trial court order Sanders committed to a state asylum first where he may receive treatment for his mental illness.

CONCLUSION

Based on the propositions briefed and the authorities cited above, together with any plain error noticed by the Court which has not been specifically raised, Sanders requests that the judgment of the trial court and the Sanders conviction and sentence on Count II be reversed and this case remanded to the for a new trial on the merits on Count II. In the alternative, should this Court affirm the issues pertaining to the guilt phase of the trial, Sanders requests that his sentence be reversed and the matter be remanded with instructions that Sanders be first conveyed to a state asylum pursuant to Count I and serve his prison sentence on Count II only upon his release from confinement in the state asylum.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: 

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CERTIFICATE OF SERVICE

I, Hunter N Aikens, Counsel for Keir D. Sanders, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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