

**WILLIE JACKSON**

**APPELLANT**

**V.**

**NO. 2008-KA-1479-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.

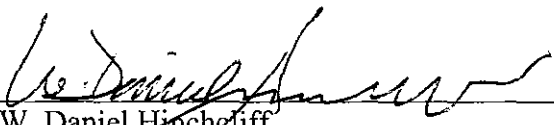
1. State of Mississippi
2. Willie Jackson, Appellant
3. Honorable Forrest Allgood, District Attorney
4. Honorable James T. Kitchens, Jr., Circuit Court Judge

This the 9<sup>th</sup> day of March, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

  
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**STATEMENT OF THE ISSUES**

**ISSUE NO. 1: WHETHER THE PROSECUTION USED TACTICS DESIGNED TO INFLAME THE PASSIONS OF THE JURY BY CONTINUED REFERENCES TO THE DELETERIOUS EFFECT OF DRUGS ON SOCIETY THEREBY DENYING THE DEFENDANT A FAIR TRIAL.**

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Oktibbeha County, Mississippi, and a judgement of conviction for the crime of sale of a controlled substance against Willie Jackson following a jury trial commence on February 2, 2008, the Honorable James T. Kitchens, Jr., Circuit Judge, presiding. A second count of sale of a controlled substance was severed from the present case. The indictment was amended to charge Mr. Jackson as an habitual offender under M.C.A. § 99-19-81. Pursuant thereto, Mr. Jackson was adjudicated as an habitual offender and sentenced to thirty (30) years without the benefit of probation or parole. Mr. Jackson is presently incarcerated with the Mississippi Department of Corrections.

**FACTS**

Before the trial began, during voir dire, the state began to develop its theme of this case when it asked the jury panel if there was anyone among them thought that “we don’t have a drug

The State commenced its proofs in this matter with the testimony of a forensic chemical analyst from the Mississippi Crime Lab, Jamie Johnson [“Johnson”]. The defense stipulated to his expertise in the field of forensic chemistry specializing in the field of identification of controlled substances. (T. 112) Johnson said he performed the scientifically accepted lab tests. The substance he examined was identified as 0.051 grams of cocaine base, a controlled substance. (T. 116-117) Johnson also provided the last link in the chain of custody.

Kimberly Henderson [“Henderson”], a twenty-five year old mother of two and a “recovered” drug addict, testified that she worked as a “civilian informant.” She testified without objection to her own travails with drug abuse, telling the jury such things as she only weighed 93 pounds while using and that she gave birth while addicted. (122-123) The witness cried as she related her personal problems from drugs; losing her husband and almost losing her arm and her life (T. 123)

“By the grace of God” she was rescued from her debased life by a police officer, so she decided to become an informant to help “get drugs off the street” in Columbus and Starkville. (T. 124-125) She told the jury she had already made twenty undercover buys. (T. 125) Again no objection to this testimony was entered.

Testimony on the present matter consisted of the usual pre-buy preparations, conducted after she received a call from Willie Jackson offering to sell her cocaine. After first attempting to meet in the park, Henderson went to Jackson’s apartment and he came to her vehicle. (T. 126-128) She took the “rock” and counted out two twenties. Then she offered additional details that Jackson also offered her “blow” (powdered cocaine) and she replied she preferred the drug ecstasy, which Jackson said he could get. Once again, no objection was made to this testimony. (T. 128)

Gus McKay ["McKay"], worked with the Tri-County Narcotics task Force. (T. 151-152) He first explained to the jury the role of the Task Force and of civilian informants. He told the jury that the job of the task Force was to go after street dealers and thereby reduce the violent crimes that "accompany... drug crimes." (T. 152) He then related the events of the sting that occurred within a ten to fifteen minute time frame. (T. 151-163) A second tape from a camera on the floorboard, was uncovered on cross examination and ultimately was also admitted into evidence

Upon these proofs, the State rested. (T. 178) A motion for directed verdict was denied and Jackson was advised pursuant to *Culberson*. Jackson chose to not testify and the defense rested.

Closing argument included the following theme oration:

If people didn't become addicted and destroy families and prostitute their bodies to get money for crack, then who cares.

\*\*\*\*

We live in a country where the DA's office can't hold somebody accountable for what they do and pushing this stuff on addicts.

The law enforcement, the good work that they do, they still can't hold people accountable. All they can do is charge people.

In America, a judge can't even do it. What it takes is it takes people from the community that we call jurors. It takes jurors to listen to the evidence and to keep and to hold somebody accountable. (T. 205)

### **SUMMARY OF THE ARGUMENT**

The State used a theme of the scourge of drug abuse across the Golden Triangle and even across America to improperly incite the emotions of the jury and shift their focus away from the guilt or innocence of this one defendant and to raise the jury's sympathies for drug users and the cost

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The standard used to weigh the statements and questions of the prosecuting attorney when a claim of misconduct by use of inflammatory and prejudicial tactics which are designed to influence the jury is “whether the natural and probable effect of the improper argument is to create unjust prejudice against the accused so as to result in a decision influenced by the prejudice so created.” *Sheppard v. State*, 777 So. 2d 659, 661 (Miss. 2000) In the present case, it is argued, that the prosecution, throughout the trial, instituted a theme of the pernicious consequence of drugs in the Golden Triangle area and even the United States as a whole. Such a theme could only result in a jury decision tainted by considerations of drugs on society. As shown in the standard, the question on review is whether the jury decision was influenced by the prejudicial tactics.

Section 26 of Article 3 of the Mississippi Constitution guarantees, among other things that a person accused of a crime has a right to a “ trial by an impartial jury...” Further, it states that this right to a jury trial is “inviolable.” Similarly, the right to “an impartial jury” is also guaranteed by the Sixth Amendment to the Constitution of the United States of America. Hence, an impartial jury is a most basic and fundamental right.

The defense in this case objected only once to the repeated references complained of in this brief. None-the-less, this should not operate as a procedural bar. Of course the general rule is that this Court will not consider issues which are not properly raised at trial. But, our Supreme Court has held, in long established precedent, as Justice Percy M. Lee stated: “Constitutional rights in serious criminal cases rise above mere rules of procedure.... Errors affecting fundamental rights are



Thus, the motif presented throughout the trial, comments and irrelevant evidence, by the prosecution should be condemned. An attorney cannot “appeal to the prejudices of men by injecting prejudices ..’ *McGowen v. State*, 859 So. 2d 320, 347 (Miss. 2003) The construction of prejudicial influence on the jury began with a question posed by the State during voir dire:

[I]s there anybody that thinks, well, yeah, drugs are a problem in places like New York and Chicago and Los Angeles and Atlanta, but we don’t have a problem here in the Golden triangle area.” (T. 49-50)

The theme of drugs as a local and country wide problem that requires a conviction in this matter is implanted before the jurors are even selected. The prosecutor, while still conducting voir dire the jury on drugs, introduce the fact that the confidential informant had been an addict, reminding the jury that drugs affect members of the community. The State tells the jury panel that the C.I. had been addicted to cocaine, the very drug involved in this suit. “[D]rug problem[s]” as a theme has already been emphasized twice to the jury.(T. 51-53) The defense objection was overruled.

Opening remarks by the State exemplified the theme as the prosecutor told the impaneled jurors that the Task Force was created to “go out and try to identify and apprehend individuals who are selling drugs in our community.” (T. 107) Jackson is thence made part of a larger community problem. The C.I. is used in this soliloquy to tell the jury how addicts can hit “rock bottem”, “injecting [her arms] with needles” , as “her life was falling apart.” (T. 107)

When the C.I. took the stand, the State introduced highly prejudicial and irrelevant evidence that, not only had the C.I. used drugs but that she had become addicted. She, at one time had only weighed 93 pounds. While using she had given birth to a child, reminding the jury of the tragedy of “crack babies.” (T. 122) The prosecutor went on to ask a direct question that had no conceivable

Describe what these drugs had done to you, for the ladies and gentlemen of the jury. (T. 123)

She cried as she told the jury that she was in serious financial trouble, She was “on the verge of losing [her] husband, [her] son, [her] house.” She told the jury she was injecting cocaine and methamphetamine, causing her to “almost lose [her] arm and [her] life.” (T. 1230 her testimony went on to elicit more sympathetic influence on the jury as she told them about the numerous drug pushers on the streets. (T. 124)

Superfluous detail was elicited by the prosecutor, while improperly interpreting the video tape of the sale, when he asked the following leading question:

It sounded as if he (Henderson) asked you for some more blow.  
(T. 142)

Again, irrelevant and prejudicial testimony was improperly educed by the State. This attempt to taint the jury with a bias against this defendant continued as the State went further down the path of irrelevant and prejudicial leading questions when the prosecutor asked Henderson:

You the asked him for some rolls. (T. 142)

The State, not finished with painting this broad mural of drug pushing, then had the witness explain that “rolls” refers to the illicit drug “ecstasy.” (T. 143)

The narcotics officer gave a detailed explanation of C.I.’s being able to enter the drug underworld of “drug circles”, again broadening the scope of this trial to become a part of the overall war on drugs. (T. 156157)

little additional evidence was adduced, but the flushing out of the war on the plague of drugs theme was not yet completed. In closing argument, the prosecutor made sure to conclude his

This argument is clearly not addressing the facts of this case, but telling the jury that they can help right the horrors of drug abuse as it affects “people” and “families,” reminding jurors that some users go so far as to prostitute themselves to get money for drugs. Such prostituting is outside any evidence adduced at trial and can only be seen as an endeavor to inflame the passions of this jury. “The purpose of the statement was to prejudice [Jackson’s] defense, and had nothing to do with the evidence ...” *Bailey v. State*, 952 So. 2d 225 (Mis App.2006) and thus was improper.

In conclusion, it is clear that the State had a theme theory of this case, that exceeded the relevant evidence of this trial and was designed to inflame the passions of the jury so as to influence the verdict.

### CONCLUSION

The extraneous and improper injection of a suggestion to the jury that it need address the drug problem as a whole, and prevent the devastation drugs cause, in the Golden Triangle and beyond, was highly prejudicial to this defendant and cannot be said to have influenced the jury. Accordingly, this case should be reverse and rendered, or remanded for a new trial.

Respectfully Submitted,  
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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:

Honorable James T. Kitchens, Jr.  
Circuit Court Judge  
P O Box 881  
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Honorable Forrest Allgood  
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This the 9<sup>th</sup> day of March, 2009.

  
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