

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2008-KA-01544-COA

LONI MARIE RUTLAND

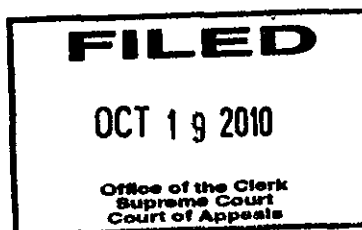
APPELLANT

vs.

2008-KA-1544

STATE OF MISSISSIPPI

APPELLEE



SUPPLEMENTAL BRIEF OF THE PETITIONER

Submitted by:

**WM. ANDY SUMRALL
P. O. BOX 1068
JACKSON, MS 39215
601/355-8775**

**THOMAS P. WELCH, JR.
LAW OFFICE OF THOMAS P. WELCH, JR.
P. O. BOX 1068
JACKSON, MS 39215
601/944-9200
MSF [REDACTED]**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2008-KA-01544-COA

LONI MARIE RUTLAND

APPELLANT

vs.

2008-KA-1544

STATE OF MISSISSIPPI

APPELLEE

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

ii

CONCLUSION

2

CERTIFICATE OF SERVICE

4

TABLE OF CASES AND AUTHORITIES

STATE CASES

Buffington v. State, 824 So. 2d 576, 582 (Miss. 2002)	1,2
Faraga v. State, 514 So. 2d 295, 303 (Miss. 1987)	1

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2008-KA-01544-COA

LONI MARIE RUTLAND

APPELLANT

vs.

STATE OF MISSISSIPPI

APPELLEE

SUPPLEMENTAL BRIEF OF APPELLANT

Comes now Loni Marie Rutland, appellant, by and through counsel pursuant to MRAP Rule 17(h) and files this supplemental brief in the above styled case, and in support thereof would most respectfully show:

In the supplemental brief filed by the State, the State argues that omission can rise to the level of intentional acts and is support cites to *Buffington v. State* 824 So. 2d 576, 582 (Miss. 2002) citing *Faraga v. State* 514 So. 2d 295, 303 (Miss. 1987). “*Buffington’s* interpretation of the statute would allow one to refuse to feed a child until the brink of death, yet the omission, intentional or negligent, could be charged only as a misdemeanor. This would not serve the purpose behind the statute.” Yet the language in *Faraga* clearly speaks to an intentional act. To refuse to do something requires a conscious, intentional choice. There is no evidence of another verb, not included in the statutory language, that the omission of which is what the Petitioner seeks relief under. There is an utter lack of an intentional act, or even an omission. The position of the State still seeks to gloss over the utter lack of evidence of any act or omission allegedly committed by the Petitioner.

The second issue addressed by the State again seeks to remove an intentional act or omission from the necessary elements of the crime that the Petitioner was convicted of. The

State cites to Buffington again, “failure to feed, nourish, or provide medical care to a child can be intentional, and such a refusal may cause serious bodily injury.” Again, the examples cited by the State would require a conscious, deliberate, **intentional**, choice by the Defendant. By the State’s rationale, any act that resulted in serious bodily injury to a child, would be felonious child abuse, such as a child climbing a tree and falling out, and breaking an arm or leg while the parent stepped inside to get the child lunch, a drink, a snack, etc. That would not serve the purpose of the statute.

Finally, the State contends the Petitioner did not argue that any prejudice resulted from the juror bringing definitions from a dictionary into the jury room. “In conjunction with the State’s failure to prove an intentional act by Rutland, the jury itself was confused and took improper steps to try and reconcile the absence of proof of an intentional act. “ Page 3-4 of the Petition for Writ of Certiorari, “The introduction of outside “evidence”, especially the type that changes the present charge from a felony to a misdemeanor can only be construed as an improper influence on the jury. “ Page 4 of the Petition for Writ of Certiorari. “As the Trial Court felt it was improper for him to instruct the jury as to the definitions, there is absolutely no way that a juror looking up definitions, from an unknown source, and the rest of the jury using the juror’s extraneous evidence, could possibly be proper.” Page 5 of the Petition for Writ of Certiorari.

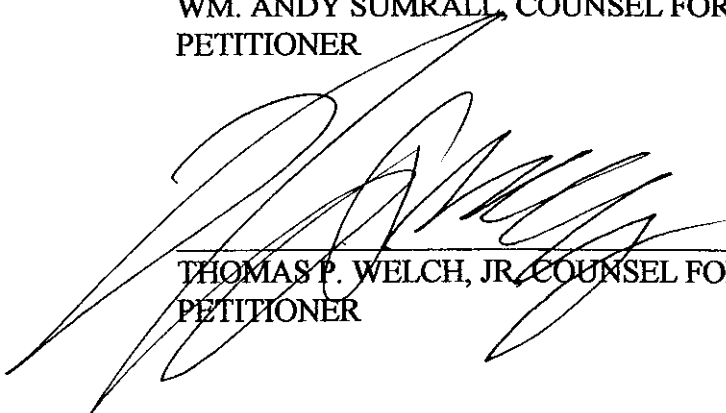
CONCLUSION

With the arguments presented here, as well as the arguments set forth in the Petition for Writ of Certiorari, the Petitioner asks this Court to reverse and render, or in the alternative, reverse and remand this case.

Respectfully submitted,



WM. ANDY SUMRALL, COUNSEL FOR
PETITIONER



THOMAS P. WELCH, JR, COUNSEL FOR
PETITIONER

CERTIFICATE OF SERVICE

I, Wm. Andy Sumrall, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing to the following:

Honorable Forrest A. Johnson, Jr.
Circuit Court Judge
P.O. Box 1372
Natchez, MS 39121

Honorable Ronnie Harper
District Attorney
P.O. Box 1148
Natchez, MS 39121

Jeffrey Klingfuss, Esquire
Assistant Attorney General
P.O. Box 220
Jackson, MS 39205-0220

SO DATED on this, the 19th day of October, A.D., 2010.



WM. ANDY SUMRALL