

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

**CHARLES R. NELSON**

**APPELLANT**

**V.**

**NO. 2008-KA-1614-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**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.

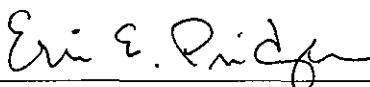
1. State of Mississippi
2. Charles R. Nelson, Appellant
3. Honorable Dewayne Richardson, District Attorney
4. Honorable Betty W. Sanders, Circuit Court Judge

This the 23<sup>rd</sup> day of February, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



ERIN E. PRIDGEN  
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
301 North Lamar Street, Suite 210  
Jackson, Mississippi 39205  
Telephone: 601-576-4200

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF AUTHORITIES .....	iii
STATEMENT OF THE ISSUE .....	1
STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS .....	2
SUMMARY OF THE CASE .....	3
ARGUMENT	
THE TRIAL COURT ERRED IN FAILING TO GRANT NELSON'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT HIS CONVICTIONS OF UTTERING A FORGERY AND CONSPIRACY .....	4
CONCLUSION .....	9
CERTIFICATE OF SERVICE .....	10

## TABLE OF AUTHORITIES

### STATE CASES

<i>Barmwell v. State</i> , 567 So. 2d 215 (Miss. 1990) .....	7
<i>Cannady v. State</i> , 855 So. 2d 1000 (Miss. Ct. App. 2003) .....	5
<i>Coleman v. State</i> , 926 So. 2d 205 (Miss. Ct. App. 2007) .....	4
<i>Duhart v. State</i> , 927 So. 2d 768 (Miss. Ct. App. 2006) .....	5, 7
<i>Flanagan v. State</i> , 605 So. 2d 753 (Miss. 1992) .....	7
<i>Griffin v. State</i> , 480 So. 2d 1124 (Miss. 1985) .....	7
<i>Keyes v. State</i> , 166 Miss. 316, 148 So. 361 (Miss. 1933) .....	7
<i>Pate v. State</i> , 557 So. 2d 1183 (Miss. 1990) .....	4
<i>Wiseman v. State</i> , 771 So. 2d 977 (Miss. Ct. App. 2000) .....	7

### STATE STATUTES

Miss. Code Ann. § 97-1-1 (1972) .....	7
Miss. Code Ann. § 97-21-59 (Rev. 2006) .....	5
Miss. Code Ann. §97-1-1 (Supp. 2008) .....	7
Miss. Code Ann. §97-21-59 (1972) .....	1, 5

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

**CHARLES R. NELSON**

**APPELLANT**

**V.**

**NO. 2008-KA-1614-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

---

**BRIEF OF THE APPELLANT**

---

**STATEMENT OF THE ISSUE**

**THE TRIAL COURT ERRED IN FAILING TO GRANT NELSON'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT HIS CONVICTIONS OF UTTERING A FORGERY AND CONSPIRACY.**

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Washington County, Mississippi. Charles R. Nelson was convicted on two counts of uttering a forgery, in violation of Section 97-21-59 of the Mississippi Code Annotated of 1972 as amended, and two counts of conspiracy to commit uttering a forgery, in violation of Section 97-1-1 of the Mississippi Code Annotated of 1972, as amended. The Honorable Betty W. Sanders, Circuit Court Judge, presided over the two-day, jury trial which

began on August 11, 2008. The jury rendered guilty verdicts on all charges.

The Court sentenced Nelson as a habitual offender to serve a total of thirty (30) years in the custody of the Mississippi Department of Corrections, with seventeen and one-half (17 ½) years suspended. He was sentenced as follows: **Count I - Uttering Forgery** - ten (10) years to serve with five (5) years suspended; **Count II - Conspiracy** - five (5) years to serve with two and one-half (2 ½ ) years suspended; **Count III - Uttering Forgery** - ten (10) years to serve with five (5) years suspended; **Count IV - Conspiracy** - five (5) years to serve with two and one-half (2 ½ ) years suspended. Count II to be served consecutive to Count I; Count III to be served consecutive to Counts I and II; Count IV to be served concurrent to Counts I, II and III. In addition to his sentence, Nelson was ordered to pay restitution and the required court costs and attorney fees.

The trial court denied Nelson's motion for JNOV, or in the alternative, motion for a new trial. Nelson timely filed this appeal on September 4, 2008. Nelson is currently incarcerated with the Mississippi Department of Corrections.

### **STATEMENT OF THE FACTS**

Christine and Derek Thompson, owners of Thompson Management Services, contracted with the County Housing, Education and Community Services organization ("County Housing RHED") to manage apartments for low income families in Greenville, Mississippi. [Tr. 52-53] The Thompsons were sole owners of Thompson Management and Derek Thompson served on the board of directors for County Housing RHED.

In January 2007, the Thompsons notified the Greenville Police Department that unauthorized checks were drawn from both the County Housing RHED Grant and Thompson Management accounts. [Tr. 25]. On the County RHED Grant account, a check was made out to Larry Turner in

the amount of \$700.50. A check was also made out to Larry Turner from the Thompson Management account in the amount of \$916.00. The Thompsons did not know Larry Turner and did not recognize the signature presented as the authorized drawer of the check. [Tr. 56, 91]

Larry Turner, a drug addict with various run-ins with the law, was arrested by police for an unrelated attempt to pass a forged check. According to the police, Turner was found in the car with Charles R. Nelson when Turner was arrested, however, Nelson was not arrested for any wrongdoing at the time. He voluntarily cooperated with police and was allowed to leave the scene. When questioned by police about the Thompsons' accounts, Turner admitted to cashing the checks and said he received the checks from "William." According to Turner, William gave Turner the checks to cash at the local Wal-Mart and, in turn, Turner received \$150.00.

The police presented Turner with a photo line-up. Turner identified Charles R. Nelson as the man he knew as "William." Nelson is Christine Thompson's cousin. Nelson worked for Thompson Management as the head of maintenance for the properties the Thompsons managed. According to Turner, the police provided him with Nelson's name. Nelson was eventually arrested, and charged with two counts of conspiracy to commit forgery and two counts of uttering a forgery. Nelson has maintained his innocence in all charges.

### **SUMMARY OF THE CASE**

The State provided insufficient evidence that Charles Nelson uttered forgery on the checks that were fraudulently presented to Wal-mart by Larry Turner. Likewise, the State also failed to present sufficient evidence that a conspiracy existed between Turner and Nelson to present the forged instruments.

## ARGUMENT

### **THE TRIAL COURT ERRED IN FAILING TO GRANT NELSON'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AS THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT HIS CONVICTIONS OF UTTERING A FORGERY AND CONSPIRACY.**

#### *i. Standard of Review*

The Court reviews challenges to the legal sufficiency of the evidence in the light most consistent with the verdict. *Pate v. State*, 557 So. 2d 1183, 1184 (Miss. 1990). The prosecution is given the benefit of all reasonable inferences from the evidence. *Id.* However, reversal is required when the facts and inferences drawn from the evidence indicate that, as to one or more of the elements of the offense charged, reasonable and fair-minded jurors could only find the accused not guilty. *Coleman v. State*, 926 So. 2d 205, 208 (¶9) (Miss. 2007).

#### *ii. There was insufficient evidence that Nelson uttered a forgery*

There are several undisputed issues in this case. It is undisputed that the two checks listed in the indictment under Counts I and III in this case were forged documents. Christine and Derek Thompson, the authorized signatories for the County Housing RHED Grant and Thompson Management Services, Inc., did not sign the checks as the authorized drawers on the checks. Neither Christine nor Derek knew or recognized the signatures on the checks. The Thompsons did not authorize these charges and there is no evidence that either party provided anyone with any blank checks from these accounts. It is undisputed that someone forged these documents. It is undisputed

that Larry Turner presented these forged checks to Wal-Mart as true documents. What is in disputed, however, is whether Charles Nelson was the person that forged these documents and whether any conspiracy existed between Nelson and Turner when Turner presented the forged checks to Wal-Mart.

Nelson was convicted of two counts of forgery, pursuant to Miss. Code Ann. § 97-21-59 (Rev. 2006). “In order to sustain a conviction for uttering forgery, the State must prove beyond a reasonable doubt (1) that the defendant published or uttered as true, (2) a forged, altered, or counterfeit instruments, (3) knowing the instrument to be forged, altered, or counterfeited, (4) with the intent to defraud. Miss. Code Ann. §97-21-59; *Duhart v. State*, 927 So. 2d 768, 775 (¶8) (Miss. Ct. App. 2006).

The State failed to prove sufficient evidence regarding each of the four elements. First, the State never provided evidence that Nelson presented the forged checks to the Wal-Mart as true documents. In fact, Turner admitted that he presented the checks to the cashiers at Wal-mart. There is no testimony or evidence that Nelson was present in the Wal-Mart when Turner passed this forged instruments off as true documents.

The defendant’s possession of a forged instrument is prima facie evidence that the defendant committed the forgery or had someone else to do it for him. *Cannady v. State*, 855 So. 2d 1000, 1003 (¶9) (Miss. Ct. App. 2003). However, in this case, there is no other proof that Nelson had possession of the check other than Turner’s testimony and the association between Nelson and the Thompsons. Both of these issues, Nelson argues, are insufficient to satisfy the requisite showing of possession.



First, the State relies on the testimony of Turner, an admitted drug abuser and convicted felon, as the proof that Nelson had possession of the checks. [Tr. 84-86] The jury did not receive any evidence that Turner recognized Nelson's signature as the signature on the bottom on the checks or that Turner witnessed Nelson sign any of the checks. Turner testified that when "William" gave him the checks in question, the checks were preprinted with Turner's named as the endorsee and the dollar amount already printed on the checks. [Tr. 82] Neither Christine nor Derek was able to identify the forged authorized signature on the checks. [Tr. 57, 92] During a bench conference, out of the presence of the jury, the State informed the Court that the signatures on the checks were later compared to the signatures on Nelson's work orders and the signatures matched. [Tr. 39] However, this information was not presented to the jury and, therefore, the jury could not have considered this as sufficient evidence that Nelson forged these documents.

Second, Nelson's association with Thompson Management Services was not sufficient evidence that he stole the checks in question. The State did not present evidence that Nelson ever acquired the checks from the Thompson Management Services office. Christine Thompson testified that the checks were kept locked in their office in Derek Thompson's desk drawer. [Tr. 58] The Thompsons' office was an inner office inside the building and none of the employees had a key to their private office. Only one of the Thompsons' employees had a key to the outer office and that did not include Nelson. [Tr. 70] Christine made a special point to keep her office locked anytime the couple was away from the inner office. [Tr. 59] Her husband and she were the only people that had access to the checks in that drawer. Although Nelson was the head of maintenance, he never had any access to the office. [Tr. 96] He did not even work in the office building. He worked out of the office, maintaining the properties the Thompsons' owned.

In many cases, the evidence is sufficient when the accused presents the actual forged document to the institution or person as a true document. In *Duhart v. State*, 927 So. 2d at 775, it was the accused that passed the forged check to the store clerk for cashing. Likewise, in *Barmwell v. State*, 567 So. 2d 215, 218 (Miss. 1990), the bank teller identified that accused as the person who cashed the fraudulent check. Even in cases where the fraudulent transfer was incomplete, the case still hinged on the accused possession of the forged instrument. *Wiseman v. State*, 771 So. 2d 977, 980 (¶12) (Miss. Ct. App. 2000). In *Wiseman*, the accused knowledge of the forged document was also substantiated by his confession to the crime as he exited the store. *Id.*

Mississippi law has required that the accused have actual knowledge of the forgery in order to constitute the offense of forgery. *Keyes v. State*, 166 Miss. 316, 148 So. 361 (Miss. 1933). The State failed to present sufficient proof, circumstantial or direct, that Nelson forged the checks drawn from the Thompsons' account.

*iii. There was insufficient evidence that Nelson conspired to utter a forgery*

Nelson was also convicted of two counts of conspiracy, pursuant to Miss. Code Ann. §97-1-1 (Supp. 2008). Conspiracy is the agreement of two or more people to commit a crime. Miss. Code Ann. § 97-1-1; *Flanagan v. State*, 605 So. 2d 753, 757 (Miss. 1992). No overt act is required to complete the conspiracy but the parties involved must acknowledge that they are entering into a common plan and they must knowingly intend to further the common purpose. *Griffin v. State*, 480 So. 2d 1124, 1126 (Miss. 1985). The agreement between the parties does not have to be formal or expressed and can be inferred through circumstantial evidence, such as by declarations, acts and the conduct of the alleged conspirators. *Id.*

Nelson worked for the Thompson Management Services as head of maintenance and neither the Thompsons nor Turner previously knew each other. The State presented evidence that Nelson was in the car with Turner when he was arrested for attempting to pass a forged check in an unrelated case. [Tr. 99] Because of this, the State attempted to draw the conclusion that Nelson conspired with Turner to pass the forged checks in this case. This evidence fails to show any common plan or common purpose and, as further proof of this, Nelson was not arrested at the scene with Turner, rather he was allowed to go home.

This leaves Turner's testimony as the only other evidence of a conspiracy between Nelson and Turner. At trial, Nelson exercised his constitutional right to not testify at trial. Turner, who admitted being under the influence of drugs and testified that he needed money for a quick fix. [Tr. 80-82] Although he identified Nelson in a photo line-up as the co-conspirator, he knew the co-conspirator as William. [Tr. 45, 83] Likewise, Nelson's admission that he was zoned out of reality during the time is further proof that the conspiracy should not rest on his testimony alone.

**CONCLUSION**

Based on the trial court's error in denying the motion for JNOV, together with any plain error noticed by the Court that has not been specifically raised, Nelson prayerfully request the Court to reverse and render the trial court's decision. In the alternative, Nelson requests this Court to reverse and remanded this case to the trial court for a new trial.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: Erin E. Pridgen  
ERIN E. PRIDGEN  
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
301 North Lamar Street, Suite 210  
Jackson, Mississippi 39205  
Telephone: 601-576-4200

## CERTIFICATE OF SERVICE

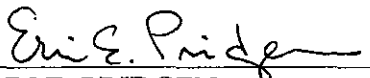
I, Erin E. Pridgen, Counsel for Charles R. Nelson, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Betty W. Sanders  
Circuit Court Judge  
Greenwood, MS 38935

Honorable Dewayne Richardson  
District Attorney, District 4  
P.O. Box 426  
Greenville, MS 38702

Honorable Jim Hood  
Attorney General  
Post Office Box 220  
Jackson, MS 39205-0220

This the 23<sup>rd</sup> day of February, 2009.

  
\_\_\_\_\_  
ERIN E. PRIDGEN  
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
301 North Lamar Street, Suite 210  
Jackson, Mississippi 39201  
Telephone: 601-576-4200