

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

VANESSA FRANCES DECKER

APPELLANT

VS.

NO. 2008-KA-1621

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: STEPHANIE B. WOOD
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	2
I. THE TRIAL COURT DID NOT ERR IN ALLOWING A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT	2
II. THE APPELLANT FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT THAT MISSISSIPPI CODE ANNOTATED §43-47-19 IS UNCONSTITUTIONALLY VAGUE	6
CONCLUSION	11
CERTIFICATE OF SERVICE	12

TABLE OF AUTHORITIES

FEDERAL CASES

<i>United States v. Brown</i> , 333 U.S. 18, 25, 68 S.Ct. 376, 380, 92 L.Ed. 442, 448 (1948)	7
--	---

STATE CASES

<i>Bell v. State</i> , 725 So.2d 836, 855 (Miss. 1998)	3
<i>Boatner v. State</i> , 754 So.2d 1184 (Miss. 2000)	10
<i>Cantrell v. State</i> , 507 So.2d 325 (Miss. 1987)	4, 5
<i>Cassibry v. State</i> , 404 So.2d 1360, 1368 (Miss. 1981)	8
<i>City of Natchez, Miss. v. Sullivan</i> , 612 So.2d 1087, 1089 (Miss. 1992)	9
<i>Cuda v. State</i> , 639 So.2d 22 (Fla. 1994)	9
<i>Edwards v. State</i> , 800 So.2d 454, 460-61 (Miss. 2001)	7
<i>Harris v. State</i> , 830 So.2d 681, 684 (Miss. Ct. App. 2002)	2
<i>Kerr-McGee Chemical Corp. v. Buelow</i> , 670 So.2d 12, 19 (Miss. 1995)	8, 9
<i>Lee v. State</i> , 944 So.2d 35 (Miss. 2006)	6
<i>Lee v. State</i> , 944 So.2d 56 (Miss. Ct. App. 2005)	5
<i>Loden v. Mississippi Pub. Serv. Comm'n</i> , 279 So.2d 636, 640 (Miss. 1973)	7
<i>Reining v. State</i> , 606 So.2d 1098, 1103 (Miss. 1992)	8
<i>Richmond v. State</i> , 751 So.2d 1038 (Miss. 1999)	6
<i>Roberson v. State</i> , 501 So.2d 398, 400 (Miss. 1987)	8
<i>Spann v. State</i> , 771 So.2d 883, 898 (Miss. 2000)	3
<i>State v. Burnham</i> , 546 So.2d 690, 692 (Miss. 1989)	8
<i>State v. Martin</i> , 495 So.2d 501, 502 (Miss. 1986)	8
<i>State v. Sailor</i> , 684 A.2d 1247, 1249 (Del. Super. 1995)	9, 10

<i>Trainer v. State</i> , 930 So.2d 373, 381 (Miss. 2006)	11
<i>Vance v. Lincoln County Dep't of Pub. Welfare</i> , 582 So.2d 414, 419 (Miss. 1991)	7
<i>Wells v. Panola County Bd. of Educ.</i> , 645 So.2d 883, 888 (Miss. 1994)	7
<i>Westbrook v. State</i> , 953 So.2d 286, 289 (Miss. Ct. App. 2007)	8

STATE STATUTES

Mississippi Code Annotated Section 1-3-65	8
Mississippi Code Annotated Section 43-47-5	10, 11
Mississippi Code Annotated Section 43-47-6(I)	3
Mississippi Code Annotated Section 97-3-95(c) (Supp. 1986)	4
Mississippi Code Annotated Section 97-3-95(1)(d) (Rev. 2000)	5

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

VANESSA FRANCES DECKER

APPELLANT

VS.

NO. 2008-KA-1621

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUES

- I. THE TRIAL COURT DID NOT ERR IN ALLOWING A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT.
- II. THE APPELLANT FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT THAT MISSISSIPPI CODE ANNOTATED §43-47-19 IS UNCONSTITUTIONALLY VAGUE.

STATEMENT OF THE FACTS

The Appellant, Vanessa Frances Decker, was convicted of exploitation of a vulnerable adult pursuant to Mississippi Code Annotated §43-47-19 for writing checks to herself and her husband from a checking account set up for her mother, Nannie Mae Morris. The Appellant was initially charged with four counts of violating this statute. However, the first count was voluntarily dismissed by the State and the jury found her not guilty on two of the three remaining counts as the checks written with regard to those counts were written during a time when the Appellant was actually

caring for her mother. The checks written with regard to the count for which the Appellant was convicted were written during a time when Ms. Morris was living with the Appellant's sister and during which the Appellant was providing no care whatsoever for her mother. As a result of this conviction, the Appellant was sentenced to a four year suspended sentence, restitution, and a fine.

SUMMARY OF THE ARGUMENT

The trial court did not err in allowing a constructive amendment of the indictment. The constructive amendment did not substantially alter the elements of proof necessary to establish that the Appellant exploited a vulnerable adult. Consent is a non-element and the jury instruction in question properly narrowed the issue for the jury. Furthermore, the constructive amendment did not deprive the Appellant of a valid defense; thus, she was not prejudiced by the amendment.

The Appellant failed to establish beyond a reasonable doubt that Mississippi Code Annotated §43-47-19 is unconstitutionally vague. She was unable to overcome the strong presumption of validity of the statute. Moreover, the Mississippi Supreme Court has previously held that the statute was not unconstitutionally vague and ambiguous.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN ALLOWING A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT.

The Appellant first argues that she was "denied sufficient notice to prepare a defense" because the jury instructions "broadened the basis on which [she] could be convicted." (Appellant's Brief p. 7 and 17). In essence, the Appellant is arguing that the jury instructions given at trial constructively amended the indictment. This Court noted in *Harris v. State*, that "it is not error for jury instructions to reflect a constructive amendment to an indictment." 830 So.2d 681, 684 (Miss. Ct. App. 2002). Furthermore, the Mississippi Supreme Court has held that "the central question is

whether the variance is such as to substantially alter the elements of proof necessary for a conviction.” *Bell v. State*, 725 So.2d 836, 855 (Miss. 1998) (*emphasis added*). In this regard, the Supreme Court set forth the following guidelines:

It is well settled in this state that a change in the indictment is permissible if it does not materially alter facts which are the essence of the offense on the face of the indictment as it originally stood or materially alter a defense to the indictment as it originally stood so as to prejudice the defendant’s case. (*citations omitted*). The test for whether an amendment to the indictment will prejudice the defense is whether the defense as it originally stood would be equally available after the amendment is made. (*citations omitted*).

Spann v. State, 771 So.2d 883, 898 (Miss. 2000) (*emphasis added*).

In the case at hand, the instructions DID NOT SUBSTANTIALLY ALTER THE ELEMENTS OF PROOF NECESSARY for a conviction of exploitation of a vulnerable adult. The indictment charged, in pertinent part, that the Appellant exploited her mother, a vulnerable adult, by writing checks from her mother’s account “without the consent” of her mother for her own profit. (Record p. 11 and 95). The jury instruction with regard to that count read as follows:

... For you to find her guilty of exploitation of a vulnerable adult, you must believe from all the evidence in this case beyond a reasonable doubt that:

1. Vanessa Decker, on and between the 5th day of December, 2006 and the 5th day of April, 2007 in Clay County;
2. Did willfully and without lawful authority;
3. Exploit Nannie Morris, a vulnerable adult;
4. By illegally or improperly;
5. Using Nannie Morris or her resources, in the amount of \$4,120.00;
6. For her own profit or advantage;
7. Regardless of whether it was done with, or without, the consent of Nannie Morris.

...

(Record p. 69) (*emphasis added*). As indicated in the indictment, the Appellant was charged under Mississippi Code Annotated §43-47-19 which makes it illegal “to abuse, neglect, or exploit a vulnerable adult.” The definition of “exploit” as it is used in this statute is set forth in Mississippi

Code Annotated §43-47-6(i) as follows: “the illegal or improper use of a vulnerable adult or his resources for another’s profit or advantage, with or without the consent of the vulnerable adult, and includes acts committed pursuant to a power of attorney.” (*emphasis added*). Thus, in order to convict the Appellant under this statute, the State had to establish beyond a reasonable doubt that:

- 1) the victim was a vulnerable adult as defined by §43-47-6(n); and
- 2) the Appellant illegally and improperly used the victim’s resources for her own profit.

“With or without the consent of the vulnerable adult” is a non-element as nothing had to be proved to establish that the Appellant either acted with her mother’s consent or without it. In other words, the State did not have to prove anything with regard to consent under the statute. Thus, the instructions did not substantially alter the proof necessary for a conviction under the statute.

Consent in this statute is similar to consent with regard to sexual crimes where the victim is a child in the sense that the law deems a person under a certain age incapable of consenting just as the law deems a vulnerable adult incapable of consenting. For example, in *Cantrell v. State*, the defendant was convicted of violating Mississippi Code Annotated §97-3-95(c) (Supp. 1986) which forbade the sexual penetration of a child under the age of twelve. 507 So.2d 325 (Miss. 1987). The indictment in *Cantrell* charged that the defendant acted “with force;” however, the jury was instructed that they “should not consider ‘consent’ or ‘force’ to be a necessary element of the crime as charged.” *Id.* at 330. The defendant argued on appeal that the instruction clashed with the indictment. *Id.* The Mississippi Supreme Court held as follows:

We hold that the instruction properly narrowed the issue for the jury. The state was not required to prove force under §97-3-95(c) (Supp. 1986) of a child under 12 which clearly was the provision under which Cantrell was indicted. Thus, the instruction only had the effect of eliminating the “with force” language from the jury’s consideration. There was no indication that the jury was given a copy of the indictment, and thus any possible confusion was eliminated.

Id. (emphasis added). As in *Cantrell*, the instruction at issue in this case properly narrowed the issue for the jury.

A similar issue regarding “consent” was addressed in *Lee v. State*, 944 So.2d 56 (Miss. Ct. App. 2005). In this case, the defendant was convicted of two counts of statutory rape, four counts of sexual battery, and three counts of gratification of lust. *Id.* at 59. He argued on appeal that the trial court erred in allowing the State to amend the indictment to remove the words “without her consent” with regard to the sexual battery charges under §97-3-95(1)(d).¹ *Id.* at 61. This Court held that:

Lack of consent is not an element of this variety of sexual battery. A child under the age of fourteen has no legal ability to consent to such an act. In this context, the language “without her consent” had no legal meaning. Its removal did not deprive Lee of a valid defense. It follows that the trial court had the power to remove the language “without her consent,” which was not an element of the offense charged and which purported to give the defendant a basis for a non-existent defense. Furthermore, in each count of the indictment, the exact code section and subsection was noted. Thus, the indictment clearly notified [the defendant] that he was charged with sexual battery as defined by Mississippi Code Annotated Section 97-3-95(1)(d) (Rev. 2000). Upon review, we find that Lee was not prejudiced by the amendment. Therefore, the trial court did not err in allowing the State to amend the indictment.

Id. In the case at hand, just as in *Lee*, “without her consent” has no legal meaning as a vulnerable adult has no legal ability to consent. The constructive removal of these words from the indictment did not deprive the Appellant of a VALID defense. Requiring “without her consent” to be in the jury instruction would have, as set forth above by this Court in *Lee*, given the Appellant “a basis for a non-existent defense.”² The Mississippi Supreme Court granted certiorari and “agreed with the

¹ Section 97-95(1)(d) states that “a person is guilty of sexual battery if he or she engages in sexual penetration with a child under the age of fourteen (14) years of age, if the person is twenty-four (24) or more months older than the child.

² Additionally, the indictment in the case at hand, like that in *Lee*, contained a reference to the statute under which the Appellant was being charged and contained sufficient information to notify the Appellant of the charges in which she was facing.

Court of Appeal's disposition of this case." *Lee v. State*, 944 So.2d 35 (Miss. 2006). In so holding the Supreme Court noted that "our precedent establishes that 'surplusage' in an indictment may be removed without prejudice to the defendant." *Id.* at 38. It also noted its previous holding in *Richmond v. State*, 751 So.2d 1038 (Miss. 1999) in which it held that the State was required to prove an unnecessary element alleged in the indictment and clarified that holding "so that it [would not be] misread as inconsistent" with the Court's precedent concerning amendments to indictments to remove surplusage. *Id.* In so doing, the Court held that "the trial court in *Richmond* would have committed no abuse of discretion had it found that the language related to value was mere surplusage and allowed the State to amend the indictment by removing the language." *Id.* at 39.³ Accordingly, the trial court in the case at hand did not abuse its discretion in constructively amending the indictment to remove the surplusage.

As such, the constructive amendment of the indictment by the jury instruction was not improper as it did not substantially alter the elements of proof necessary for a conviction of exploitation of a vulnerable adult. Moreover, the Appellant was not prejudiced by the amendment.

II. THE APPELLANT FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT THAT MISSISSIPPI CODE ANNOTATED §43-47-19 IS UNCONSTITUTIONALLY VAGUE.

The Appellant also argues that Mississippi Code Annotated §43-47-19 is unconstitutionally vague as the definition given in §43-47-6(i) for the term "exploitation" is "so vague, indefinite, and uncertain that it fails to give notice of the crimes or unlawful acts that it purports to prohibit." (Appellant's Brief p. 18 - 19). Section §43-47-19 reads in pertinent part as follows:

³ The State recognizes that the *Lee* Court held that the *Richmond* case does hold that the State must prove all the facts charged in the indictment where the surplusage is not removed. *Id.* However, it is the State's position that the surplusage in the indictment at issue here was removed constructively via the jury instruction. Had this jury instruction not been given the State would have had to prove that the Appellant acted without her mother's consent.

(1) It shall be unlawful for any person to abuse, neglect, or exploit any vulnerable adult.

(2) . . .

(b) Any person who willfully exploits a vulnerable adult, where the value of the exploitation is less than Two Hundred Fifty Dollars (\$250.00), shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment; where the value of the exploitation is Two Hundred Fifty Dollars (\$250.00) or more, the person who exploits a vulnerable adult shall be guilty of a felony and upon conviction thereof, shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.

“Exploitation” is defined by §43-47-6(i) as “the illegal or improper use of a vulnerable adult or his resources for another’s profit or advantage, with or without the consent of the vulnerable adult, and includes acts committed pursuant to a power of attorney.”

The Mississippi Supreme Court has set forth “the standard for determining the constitutionality of a statutes” as follows:

A party challenging the constitutionality of a statute must prove his case by showing the unconstitutionality of the statute beyond a reasonable doubt. *Vance v. Lincoln County Dep’t of Pub. Welfare*, 582 So.2d 414, 419 (Miss.1991). ‘This Court will strike down a statute on constitutional grounds only where it appears beyond all reasonable doubt that such statute violates the constitution.’ *Wells v. Panola County Bd. of Educ.*, 645 So.2d 883, 888 (Miss.1994). We adhere to the rule that one who assails a legislative enactment must overcome the strong presumption of validity and such assailant must prove his conclusion affirmatively, and clearly establish it beyond a reasonable doubt. All doubts must be resolved in favor of the validity of a statute. If possible, courts should construe statutes so as to render them constitutional rather than unconstitutional if the statute under attack does not clearly and apparently conflict with organic law after first resolving all doubts in favor of validity. *Loden v. Mississippi Pub. Serv. Comm’n*, 279 So.2d 636, 640 (Miss.1973) (*citations omitted*).

Edwards v. State, 800 So.2d 454, 460-61 (Miss. 2001) (quoting *Jones v. State*, 710 So.2d 870, 877 (Miss.1998)) (*emphasis added*). The *Edwards* Court further noted with regard to criminal statutes:

Although a statute imposing criminal penalties must be strictly construed in favor of the accused, it should not be so strict as to override common sense or statutory purpose. *United States v. Brown*, 333 U.S. 18, 25, 68 S.Ct. 376, 380, 92 L.Ed. 442,

448 (1948); *see also State v. Burnham*, 546 So.2d 690, 692 (Miss.1989). Strict construction means reasonable construction. *State v. Martin*, 495 So.2d 501, 502 (Miss.1986). This Court has held that the test concerning statutory construction is whether a person of ordinary intelligence would, by reading the statute, receive fair notice of that which is required or forbidden. *Burnham*, 546 So.2d at 692; *Roberson v. State*, 501 So.2d 398, 400 (Miss.1987); *Cassibry v. State*, 404 So.2d 1360, 1368 (Miss.1981).

Id. at 461 (quoting *Reining v. State*, 606 So.2d 1098, 1103 (Miss. 1992)) (*emphasis added*). As such, “a restriction must be reasonably clear, enabling a citizen to understand what is allowed, and what is not.” *Westbrook v. State*, 953 So.2d 286, 289 (Miss. Ct. App. 2007) (quoting *Mayor of Clinton v. Welch*, 888 So.2d 416, 420(¶ 21) (Miss.2004)).

The State of Mississippi respectfully contends that Mississippi Code Annotated §43-47-19 and the definition set forth in §43-47-6(i) provide the citizens of Mississippi fair notice of what is forbidden under the statute and therefore, is not unconstitutionally vague. Mississippi Code Annotated §43-47-19 forbids, among other things, a person from illegally or improperly using a vulnerable adult or a vulnerable adult’s resources for that person’s profit. However, the Appellant argues that the statute “does not give any real notice as to how the terms ‘illegal’ and ‘improper’ relate to people who are taking care of their elderly loved ones.” (Appellant’s brief p. 20). She further argues that “there is no definition of what constitutes ‘improper’ or ‘illegal.’” (Appellant’s Brief p. 20). Mississippi Code Annotated §1-3-65 states that “all words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning.” This Court has previously upheld a lower court’s decision to use a dictionary “for common usage and terminology” when the legislature did not give a specific definition. *Kerr-McGee Chemical Corp. v. Buelow*, 670 So.2d 12, 19 (Miss. 1995). Black’s Law Dictionary defines “improper” as “not suitable, unfit, not suited to the character, time, and place.” Black’s Law Dictionary 757 (6th ed. 1990). Black’s Law Dictionary defines “illegal” as “against or not authorized by law.” Black’s Law

Dictionary 747 (6th ed. 1990). Additionally, the Mississippi Supreme Court has held that “whether a statute is ambiguous, or not, the ultimate goal of this Court in interpreting a statute is to discern and give effect the legislative intent.” *City of Natchez, Miss. v. Sullivan*, 612 So.2d 1087, 1089 (Miss. 1992). The legislative purpose for the “Mississippi Vulnerable Adults Act of 1986” is set forth in §43-47-3 and states that “the purpose of this chapter is to provide for protective services for vulnerable adults in Mississippi who are abused, neglected, or exploited.” The Mississippi Supreme Court has also held that “the proper way to determine the real intent of the legislature is to study the words used by it in context.” *Kerr-McGee Chemical Corp. v. Buelow*, 670 So.2d 12, 17 (Miss. 1995). Thus, one need look no further than the statute itself to determine the meaning of the terms. With these standards and definitions in mind, it is clear that the pertinent part of the statute to this case prohibits the use of a vulnerable adult’s money for one’s own profit in a manner which is unauthorized by law or which is not suited to the vulnerable adult’s best interests.

The Appellant relies on the Supreme Court of Florida’s holding in *Cuda v. State*, 639 So.2d 22 (Fla. 1994) to support his argument that the statute in question is unconstitutionally vague. (Appellant’s Brief p. 21 - 22). He argues that this Court should, like the *Cuda* Court, find the statute prohibiting the exploitation of vulnerable adults⁴ unconstitutionally vague for failing to define the words “improper or illegal.” (Appellant’s Brief p. 21 - 22). However, the Delaware Superior Court declined to adopt the reasoning of the *Cuda* Court in *State v. Sailor*, 684 A.2d 1247, 1249 (Del. Super. 1995) noting that there were several factors supporting the constitutionality of the

⁴ The statute at issue in the *Cuda* case reads in pertinent part as follows: “A person who knowingly or willfully exploits an aged person or disabled adult by the improper or illegal use or management of the funds, assets, property, power of attorney, or guardianship of such aged person or disabled person for profit, commits a felony . . .” Flor. Stat. Ann. §415.111(5) (1993).

Delaware Statute.⁵ Those factors, including that the title is carefully crafted, the act contains a definitional section, and the act includes a section outlining the legislative intent underlying the statute, are also applicable in this case. Mississippi's act is entitled "Mississippi Vulnerable Adults Act of 1986." It also contains a definitional section and a section stating the legislative intent. Those factors further establish the constitutionality of Mississippi's statute. Thus, the State of Mississippi urges this Court to consider the holding of the *Sailor* Court specifically its holding that although "the terms 'illegal' and 'improper' are not defined within the statute, the Court is confident that the ordinary definitions associated with the terms renders the statute secure from constitutional attack." *Sailor*, 684 A.2d at 1250.

Furthermore, and most importantly, the Mississippi Supreme Court has previously held that Mississippi Code Annotated §43-47-19 is not unconstitutionally vague and ambiguous. *Boatner v. State*, 754 So.2d 1184 (Miss. 2000). The Court was specifically presented with the following issue: "The statute gives no guidance as to the meaning of 'abuse,' 'neglect,' or 'exploitation' and . . . therefore, the criminal act is left up to a jury, or in this case, a judge to define." *Id.* at 1188. However, the Court held that "[c]learly subsections (a), (i), and (k) of section 43-47-5 . . . not only offer guidance, but lay out plain definitions of the terms 'abuse,' 'neglect,' and 'exploitation,' so that the judge in this case had not need to, nor did he, provide his own definitions." *Id.* (*emphasis added*). The Court further held that "the language of Miss. Code Ann. §43-47-5 provides definitions with understandable meaning for the punishable acts of 'abuse,' 'exploitation,' and

⁵ The statute at issue in the *Sailor* case reads in pertinent part as follows: "(a) Any person who intentionally abuses, neglects, exploits or mistreats an infirm adult shall be guilty of a class A misdemeanor. (b) Any person who intentionally exploits an infirm adult by using the infirm adult's resources shall be guilty of a class A misdemeanor where the value of the resources is less than \$500 and a class G felony where the value of the resources is \$500 or more." 31 Del.C. §3913 (Supp. 1994). 31 Del.C. §3902(5) defines "exploitation" as "the illegal or improper use or abuse of an infirm person, his resources or his rights, by another person, whether for profit or other advantage."

‘neglect’” and that “[t]hese statutory directives and definitions were intended to, and successfully provide clear legal standards that the courts can and must enforce as the Circuit Court did in this case.” *Id.* (*emphasis added*). As such, the Mississippi Supreme Court has unequivocally held the statute to be valid and constitutional.

Thus, “[k]eeping in mind that statutes come before [appellate courts] clothed with a heavy presumption of constitutional validity,” it is clear that the Appellant has failed to meet his burden of proving that the statute is unconstitutionally vague beyond a reasonable doubt. *Trainer v. State*, 930 So.2d 373, 381 (Miss. 2006). Accordingly, the Appellant’s second issue is without merit.

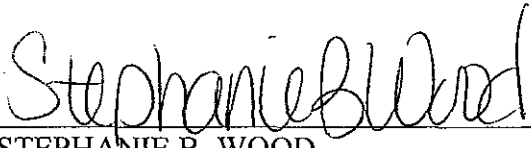
CONCLUSION

For the foregoing reasons, the State of Mississippi respectfully requests that this Honorable Court affirm the Appellant’s conviction and sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:


STEPHANIE B. WOOD
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO [REDACTED]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

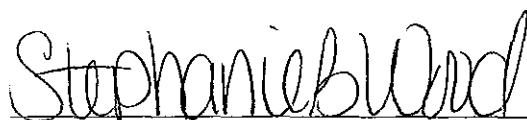
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lee J. Howard
Circuit Court Judge
P. O. Box 1344
Starkville, MS 39760

Honorable Forrest Allgood
District Attorney
P. O. Box 1044
Columbus, MS 39703

Jim Waide, Esquire
Attorney At Law
P. O. Box 1357
Tupelo, MS 38802

This the 4th day of December, 2009.


STEPHANIE B. WOOD
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680