

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

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**NO. 2008-KA-01794-SCT**

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**DONNIE RAY TUCKER a/k/a  
DONNIE RAY SUMRALL**

**APPELLANT**

**VERSUS**

**STATE OF MISSISSIPPI**

**APPELLEE**


**APPEAL FROM THE CIRCUIT COURT OF  
JONES COUNTY, MISSISSIPPI**

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**BRIEF OF APPELLANT**

**(ORAL ARGUMENT REQUESTED)**

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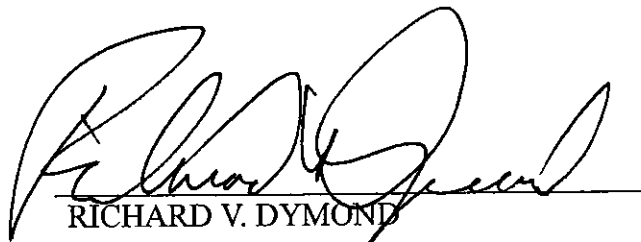
**STATE OF MISSISSIPPI**

**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 the Supreme Court and/or the judges of the Supreme Court may evaluate possible disqualification or recusal.

1. Donnie Ray Tucker aka Donnie Ray Sumrall, Appellant
2. Richard V. Dymond, Attorney for Appellant
3. Honorable Anthony Buckley, District Attorney
4. Honorable J. Ronald Parrish, Assistant District Attorney
5. Honorable Jim Hood, Attorney General
6. Honorable Billy Joe Landrum, Circuit Court Judge



RICHARD V. DYMOND

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## STATEMENT OF THE CASE

The Defendant, Donnie Ray Tucker, was indicted by the Grand Jury of Jones County on April 16, 2007 for murder.

The defense filed several motions prior to trial including, but not limited to, a motion to produce all exculpatory evidence. That is, evidence that is favorable to the defense. The district attorney represented to the court that he had met his obligation to respond to the discovery.

Subsequent to the jury verdict the defense filed a motion for a new trial alleging that the state had withheld a crucial piece of exculpatory evidence. This motion was denied.

The defendant was sentenced to serve twenty years with the Mississippi Department of Corrections for the manslaughter conviction.

It was shown at the hearing on the motion that the investigator for the state was given a recorded conversation between the deceased and his mother that took place after the fight between the deceased and the appellant. The deceased told his mother in the conversation that he was looking for a gun.

In as much as the appellant's only defense at trial was self-defense, this was exculpatory evidence. This evidence was not provided to the defense prior to or during trial notwithstanding the fact that discovery motions were filed specifically asking for Brady material and any and all DVD recordings or CD recordings.

The fact that the victim wanted a gun was terribly important. At the time that he said he wanted a gun he had no idea that the defendant had a gun. The defendant, in fact, testified that at the time of the fist fight on the side of the road he had a gun and could have killed the victim at that time and not in front of witnesses. Further, if you believe the statement of the victim that the

appellant hit him in the head with a hammer, there would be marks on his head which there were not. If murder were the objective of the appellant, he could have effected his objective at that time.

The very reason that the victim had the intent to obtain a gun and that fact was not disclosed to the defense was magnified by the testimony of the appellant and other witnesses. He had a habit of having a gun in his vehicle and was known to fight.

The victim bent over into the rear of the vehicle in what the appellant believed to be an attempt to get a gun. The so-called pathologist, Dr. Steven Hayne, testified that the bullet that killed the victim entered his buttocks and traveled through his torso to his lungs. The pathway of the projectile dictated that the victim was bent over into the rear of the vehicle. Had the jury had the benefit of the evidence that the victim wanted a gun and had kept one in his vehicle the verdict probably would have been different.

## STATEMENT OF FACTS

On August 15, 2006 the defendant, Donnie Ray Tucker, received a telephone call from his brother, Jimmy Henry Tucker, who invited the defendant to his mobile home. The defendant (Donnie) had not visited this particular residence before, so Jimmy Henry Tucker (Jim) asked his daughter, Lisa Doggette, to meet Donnie and lead him to the mobile home. Lisa met Donnie at David's Grocery and Donnie, accompanied by his girlfriend, followed her to Jim's residence at 37 Mary Ann Tolbert Road in Laurel, Mississippi. When Donnie arrived at the mobile home several persons were already present. The identity of those present at the home are in dispute even among the witnesses for the State. The persons not in dispute are Connie Crews, her two children, Wendy Murphy, and Jim. Donnie testified that David Williams, his wife, Gladys Williams, and one of their children were also at the residence when he arrived. One of the State's witnesses, Lisa Doggette, testified that Rodney Parker and his girlfriend, Donna, were both present at the trailer that day. Two of the State's witnesses, Connie Crews and Rodney Parker, testified that Rodney Parker did not come to the home with his girlfriend until late in the afternoon to exchange an air compressor. Donnie testified that no one named Rodney Parker was at Jim's residence when he arrived around the noon hour.

Donnie testified that the adults then sat around doing crystal meth and drinking alcohol, although the State's witnesses said that Jim was not drinking alcohol because he was on his breathing machine and had a trach in his throat. Jim gave Donnie some money to buy vodka, and Donnie left in his truck and went to the liquor store accompanied by his girlfriend, Kelly, David Williams, Gladys Williams, and the Williams' minor child. When Donnie arrived back at the trailer the adults drank alcohol, and Donnie expressed his desire to drive his brother's used Scout

vehicle that had recently been acquired. Donnie and Jim left in the Scout to take a ride at approximately 3:30 p.m. or thereabouts. During this drive Donnie asked Jim when he was going to pay him the money Jim owed to him on a roofing job, and an argument ensued between the brothers. Donnie stopped the vehicle, and he and Jim got out of the Scout and had a fist fight on the side of the road. Donnie testified that after the fight his brother would not get back into the Scout, so he left Jim and drove Jim's vehicle to the home of Vince Spradley, a relative of the brothers, and left the Scout there. Donnie then hitched a ride with Stephanie Spradley, Vince's wife, back to his brother's trailer where he gathered his girlfriend and left in his truck after first arranging to meet David Williams back at the trailer in order to "whip his ass". David Williams and his wife and minor child left the trailer, because David did not want his family to see him "get his ass whipped" by Donnie when he came back to meet him at the residence.

Following the fist fight, Jim flagged down a driver on the side of the road and got a ride to Tucker's Crossing store. Exactly what happened next is in dispute. Connie Crews testified that when Donnie arrived back at the trailer in Stephanie Spradley's car he told her that Jim was at the Spradley's on Old Antioch Road, so she drove to the Spradley's where she saw the Scout in the driveway with the doors ripped off. Connie said she asked a woman at the home if she knew where Jim was, and although the Spradleys are close relatives of Jim and Donnie and although Stephanie Spradley had given Donnie a ride to Jim's trailer, Connie Crews testified that the woman said she did not know Jim. Connie then related that she called Jim's daughter and was told that Jim was at Tucker's Crossing store, so Connie drove to the store where she related she found Jim speaking with a sheriff's deputy. Connie then said she drove Jim back to the trailer. Connie testified that Jim wanted to file charges against Donnie but that it was too late in the day to travel



to justice court, and therefore charges were not filed.

When Donnie and his girlfriend arrived back at their home on Triangle Lane in Laurel, Donnie got on his Yamaha motorcycle and traveled back to Jim's trailer to meet David Williams for their pre-arranged meeting. When Donnie got off his motorcycle Jim came out of the front door of the trailer and headed for the back of his Explorer that had its rear door up and open. From Donnie's past experience in physical fights with Jim and Donnie's foreknowledge that Jim always carried his gun in the back of his vehicle, Donnie believed that Jim was going for his gun in its usual place. Donnie testified that Jim charged at him, and out of fear for his life Donnie reacted and shot Jim with Bobby Joe Hurtt's gun that he had possession of long before this incident. Not desiring to kill his brother but only to defend himself and scare his brother, Donnie shot Jim in the left arm in order to stop him from obtaining the gun for which he was reaching in the back of the Explorer. As Jim kept reaching Donnie shot him in the left flank and the left buttock. The medical examiner testified that the wound to the buttock traveled upwards through Jim's body and lodged between two ribs which caused Jim's demise.

All three of the State's witnesses told different and conflicting stories with regard to this shooting, although all three said they were standing there when it occurred. Donnie testified that only Connie Crews, Lisa Doggette, and Wendy Murphy were present at the time Jim was shot, and that he had never before seen Rodney Parker until he actually took the witness stand in this case.

The trial was held on March 5 and 6, 2008. The jury returned a guilty verdict on the lesser included offense of manslaughter.

### **SUMMARY OF THE ARGUMENT**

The argument in this case is that the trial court erred by not granting a motion for a new trial notwithstanding the fact that the state failed to produce discovery, blatantly exculpatory evidence, that would have bolstered the defense of self-defense.

## ARGUMENT

It has long been the law that the prosecution shall not withhold exculpatory evidence from the accused, whether asked for or not in discovery.

The U.S. Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963) had the following to say:

“We now hold that the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution”

In the instant case the defendant filed a motion for discovery pursuant to Uniform Rules of Circuit and Chancery Court Practice 9.04. The motion specifically asked for any and all evidence that could be construed to be favorable to the defendant. Further, the motion asked for a copy of all video recordings, DVD recordings, CD recordings and tape recordings taken or made of any person.

Prior to trial the state furnished no compact disk recording.

It was learned after the trial that a recording was made between the deceased and his mother.

The defense filed a motion for a new trial and called to the stand the lead investigator in the case at bar, Mr. Matt Ishee. Mr. Ishee testified that during his investigation he obtained a compact disk containing a conversation between the deceased and his mother. This conversation took place after the roadside fight between the deceased and the appellant. Including in the conversation the victim says he was looking for a gun. (Defense Exhibit #1)

The prosecution knew that the only defense the appellant had was self-defense. This fact alone made the existence of the compact disk all that more material yet they failed to provide the

defense with it.

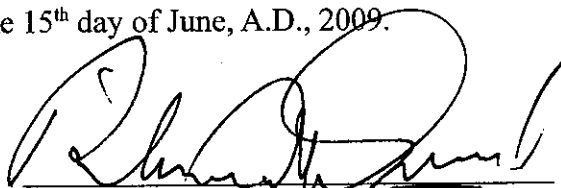
It is respectfully submitted that it is reversible error for the prosecution to fail to provide the defense with Brady material in its possession and for the trial judge to fail to grant a new trial once the newly found evidence was presented to the court.

### CONCLUSION

The defendant was denied due process and thus a fair trial when the state failed to provide the CD recording between the victim and his mother wherein the victim stated "I want a gun." Had the evidence been made known to the defense the self-defense defense would have been bolstered considerably.

It is respectfully submitted that the case at bar should be reversed and remanded for a new trial.

RESPECTFULLY SUBMITTED on this the 15<sup>th</sup> day of June, A.D., 2009.

A handwritten signature in black ink, appearing to read "Richard V. Dymond", is written over a horizontal line.

RICHARD V. DYMOND, # [REDACTED]

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**CERTIFICATE OF SERVICE**

Richard V. Dymond, counsel for Appellant, hereby certifies that he served a copy of the foregoing Brief of Appellant on all parties to this matter by first class mailing to the following:

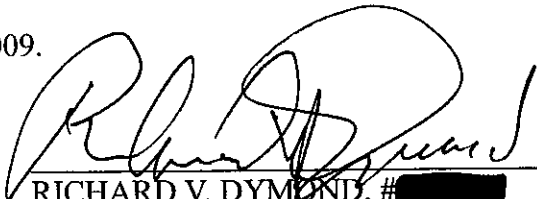
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\_\_\_\_\_  
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