

IN THE SUPREME COURT OF MISSISSIPPI

TRENT DORA

APPELLANT

V.

NO. 2008--KA-01914-COA

STATE OF MISSISSIPPI

APPELLEE

**BRIEF OF APPELLANT
TRENT DORA**

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

Lisa M. Ross, Esq.
MSB NO. [REDACTED]
514E East Woodrow Wilson Avenue
P.O. Box 11264
Jackson, MS 39283-1264
(601) 981-7900 (Telephone)
(601) 981-7917 (Facsimile)

**ATTORNEY FOR APPELLANT
TRENT DORA**

IN THE SUPREME COURT OF MISSISSIPPI

TRENT DORA

APPELLANT

V.

NO. 2008--KA-01914-COA

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record for Appellant Trent Dora 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 disqualification or recusal.

- (1) Lisa M. Ross
514E East Woodrow Wilson Ave.
P.O. Box 11264
Jackson, MS 39283-1264
(601) 981-7900 (telephone)
(601) 981-7917 (facsimile)

Appellate Counsel for Trent Dora

- (2) Jimmy Brown
Post Office Box 1276
Starkville, MS 39760

Trial Counsel for Trent Dora

- (3) Forrest Allgood, District Attorney
Rhonda Hayes Ellis, Assistant District Attorney
P.O. Box 1044
Columbus, MS 39703

Prosecutors


- (4) Honorable James Kitchens
Circuit Court Judge
P.O. Box 1387
Columbus, MS. 39703

Trial Judge

- (5) Jim Hood, Attorney General
Charlie Maris, Assistant Attorney General
Office of the Attorney General
450 High Street
Jackson, MS 39205

Attorney General

TRENT DORA, Appellant

By: 

LISA M. ROSS, Attorney for
Trent Dora, Appellant

REQUEST FOR ORAL ARGUMENT

COMES NOW, the Appellant, Trent Dora, and requests oral argument. Oral argument would be beneficial to the Court's understanding of the facts as they apply to the law on the issues raised in this appeal.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	ii-iii
REQUEST FOR ORAL ARGUMENT.....	iv
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES	vi-vii
PROCEDURAL HISTORY.....	1
STATEMENT OF ISSUES	2
STATEMENT OF THE CASE	3-11
SUMMARY OF ARGUMENT	12
ARGUMENT.....	13-19
CONCLUSION	19
CERTIFICATE OF SERVICE	20

TABLE OF AUTHORITIES

<i>Bruce v. State</i> , 746 So.2d 901, 909-10 (Miss. App. 1998).....	16
<i>Bush v. State</i> , 895 So.2d 836, 843 (Miss. 2005).....	15
<i>Chinn v. State</i> , 958 So.2d 1223, 1225 (Miss. 2007).....	18
<i>Croft v. State</i> , 992 So.2d 1152, 1158 (Miss. 2008).....	13
<i>Davis v. State</i> , 18 So.3d 842, 850 (Miss. 2009).....	15
<i>Downs v. State</i> , 962 So.2d 1255, 1261 (Miss. 2007).....	14
<i>Fisher v. State</i> , 481 So.2d 203, 211 (Miss. 1985).....	13
<i>Hansen v. State</i> , 592 So.2d 114, 142 (Miss. 1991).....	19
<i>Hill v. State</i> , 512 So.2d 883 (Miss. 1987).....	16
<i>Jackson v. Virginia</i> , 443 U.S. 307, 324, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).....	13,15
<i>Pierre v. State</i> , 607 So.2d 43, 54 (Miss. 1992).....	16
<i>Strickland v. Washington</i> , 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d (1984).....	17
<i>Stringer v. State</i> , 454 so.2d 468 (Miss. 1984).....	17
<i>Thomas v. State</i> , 278 So.2d 469, 472 (Miss. 1973).....	13

STATUTES

Miss. Code Ann. §97-3-7.....	13,14
------------------------------	-------

OTHER

<i>Miss. Const., Art. 3, Section 26</i>	17
---	----

PROCEDURAL HISTORY

On or about September 15, 2008 and September 16, 2008, Trent Dora (hereinafter “Dora”) was tried before a jury in the Circuit Court of Noxubee County, Mississippi on the charge of armed robbery. The jury found Dora guilty of simple robbery. At sentencing, on September 17, 2008, the prosecutor produced evidence that Dora had two previous felony convictions prior to his conviction for simple robbery. Judge Kitchens sentenced Dora to a term of fifteen years in the custody of the Mississippi Department of Corrections as a habitual offender. After his trial, Dora filed a motion for judgment notwithstanding the verdict. His post-trial motion was denied. Dora appeals from the verdict of guilty on the charge of simple robbery and his sentence of fifteen years as a habitual offender.

STATEMENT OF THE ISSUES

- 1. WHETHER THERE WAS SUFFICIENT EVIDENCE TO SUPPORT A VERDICT OF SIMPLE ROBBERY**
- 2. WHETHER THE MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT WAS IMPROPERLY DENIED**
- 3. WHETHER THE JURY WAS MISLED WHEN BYRON WINTERS DID NOT REVEAL HE WOULD BE REWARDED FOR HIS TESTIMONY AGAINST DORA**
- 4. WHETHER TRENT DORA'S TRIAL COUNSEL'S PERFORMANCE WAS SO DEFICIENT THAT IT DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT TO COUNSEL AND A FAIR AND IMPARTIAL TRIAL**
- 5. WHETHER THE CUMULATIVE ERRORS IN THIS CASE DEPRIVED DORA OF HIS RIGHT TO A FAIR TRIAL**

STATEMENT OF THE CASE

Trent Dora is serving a prison term of fifteen years day for day for a simple robbery that did not occur. At Dora's two day trial, Dora testified. He called one witness: Andrea Joiner Little. The State of Mississippi called Katina Black, Police Chief Tina Williams, Dustin L. Jourdan, Calvin McCrary, Phyllis Hudson, Douglas Triplett, and Byron Winters. One day after testifying against Dora, Byron Winters, who like Dora was charged with the armed robbery, was sentenced to 3 years in the Mississippi Department of Corrections.

TRENT DORA'S TESTIMONY

On October 23, 2007, in Brooksville, Mississippi, Trent Dora ("Dora") was visiting Andrea Joiner Little ("Little") at the Brooksville Medical Clinic. Little, who was married at the time, describes Dora as a friend. (T. p. 264, l. 13). Dora, who also is married with children, says he and Little were more than friends. (T. p. 296, l. 14). On this particular morning, Dora went to the clinic where Little worked to "see Andrea about the housewarming, because we was classmates, and she was – she was the class president, and we supposed to move in that house like two weeks before the accident happened. I actually come to see her to get all my classmate's addresses, because we were going to send them invitations." (T. p. 296, l. 24-29). Accompanying Dora on this trip was his daughter. (T. p.273, l. 14).

The clinic where Little worked is located across the street from Tem's Food Market. In 2006, while on his way to his brother's mother-in-law's funeral, Dora stopped at Tem's Food Market. (T. p. 281, l. 8-9). He has not visited Tem's Food Market since 2006. While getting out of his car at the clinic, Dora "heard a scream, and that's what got my attention to look up, and when I looked up, a (sic) saw a female fall. And I seen a black male ran and, like, swiped a bag up. He ran beside the building, Tem's. So I immediately put my little daughter back in the

car , and I got back in the car, and I was backing up, looking to towards my left. A car was coming, so I waited on the car to pass and I seen a car leaving Tem's parking lot, driving real fast. I backed on up, and I drove off. I found the phone, I tried to call 911, but I called 1-411 first. Then I dialed 911. And I told them, I said, I just seen Katina Brooks, I said, I just seen Katina Brooks (sic) get robbed.... I said: Well, I noticed her when she running the store, that's when I – I knew it was her.” (T. p. 273, l. 29, p. 274, l. 1).

Dora told the dispatcher “Well, I think, he was driving like a white or cream Toyota Camry, because when I was backing up, I only seen the back tire – back of the car.... I seen the car – when the car went around the curve, there's a stop sign, I seen the car make a right. That's why I said toward Macon. But he was still was in the town of Brooksville, but I said Macon because he made a right at the stop sign. And I pulled up to the stop sign, and I made a left.” (T. p. 274, l. 7-17).

Dora says the dispatcher asked him “Well, could you chase him?” Dora responded, “No, I said, I can't chase him, because my daughter is with me. And I went on to Starkville.” (T. p. 274, l. 18-19). Dora took his daughter to school in Starkville. (T. p. 280, l. 7-9).

When Dora called 911, he identified himself as “Tony.” (T. p. 275, l. 4-6). “When I called 911 and I told them what I saw, and she asked me for my name and number, I told her no, because I'm not supposed to be down here no way. She asked me again. I told her no. And she asked me again, and I said, my name is Tony, and my number is 2222, and I hung the phone up... Because I didn't want my wife finding out that I was down there.” Dora explained that he called 911 because “Well, I saw what happened, and I wanted to let the police know what I saw. I saw a crime being committed.” (T. p. 276, l. 10-12).

After Dora called 911, he received a telephone call from Brooksville Police Chief Tina Williams (hereinafter Chief Williams). (T. p. 276, l. 13-15). Chief Williams called Dora's cell telephone and asked "who is this?" Dora asked Chief Williams "who is this?" (T. p. 276, l. 18-22). Chief Williams identified herself. (T. p. 276, l. 22-23). Then, Dora identified himself as "Trent." (T. p. 276, l. 26). Dora told Chief Williams "I'm the one that called and said my name was Tony with that 222 number." (T. p. 276, l. 26-28). Chief Williams asked Dora, "why you do that?" (T. p. 276, l. 29). Dora responded "Well, I saw what happened, but I didn't want to be involved right there. And I didn't want my wife to find out that I was down there." (T. p. 277, l. 1-3).

Chief Williams asked Dora to come in to give a statement. (T. p. 276, l. 4-7). When Dora was on his way to speak to Chief Williams, he received a telephone called from Andrea Joiner. (T. p. 277, l. 12-14). Joiner told Dora "the police are asking questions about you." (T. p. 277, l. 13-14). Dora told Joiner "I am on my way down there now to straighten that out." (T. p. 277, l. 17).

Dora says that when he arrived in Brooksville, he called Chief Williams to determine where she wanted him to go. (T. p. 277, l. 21). "She told me to come to the City Hall, come to the side door. So I went in the side door, I sat down, and she asked me again why I gave the wrong information about my name being Tony, and the 222 number, and I told her gain (sic). And she asked me did I know anybody drive a white Toyota Avalon. And I asked her why, and she said: Well, we believe the car that did that, the guy that did the armed robbery, had a white Toyota Avalon." (T. p. 277, l. 22-29, p. 278, l. 1). Dora told Chief Williams "Well, the guy I know that got a white Toyota Avalon, it couldn't be him, because I just -- saw him at the store, and he was headed back home." (T. p. 278, l. 2-4).

Prior to going to the clinic on October 23, 2007, Dora saw Byron Winters at a store in Starkville, Mississippi. Dora knew Byron Winters because Winters dated Dora's sister before moving to Atlanta, Georgia. On the morning of October 23, 2007, Dora and Winters exchanged pleasantries. Winters told Dora he was on his way back to Atlanta.

While Chief Williams was questioning Dora about the identity of the driver of the Toyota Avalon, Dora told her that the person lived in Atlanta, Georgia and his name is Byron Winters. (T. p. 278, l. 6-11). Dora called Winters in the presence of Chief Williams. (T. p. 278, l. 17-19).

Chief Williams asked Dora if Winters had a tag on his car and he told her that he didn't know. (T. p. 278, l. 25-28). When Dora called Winters, he asked him, "man, you got a tag on your car?" (T. p. 279, l. 6). Byron Winters told Dora that "he had Georgia plates on the tag." (T. p. 279, l. 17).

Ten days after speaking to Chief Williams Dora learned that a warrant had been issued for his arrest. Dora turned himself into the Brooksville Police Department. He was charged with armed robbery. Dora posted a \$300,000.00 bond and remained free until his trial.

BYRON WINTERS' TESTIMONY

Prior to moving to Georgia, Winters lived in Starkville. Winters met Dora while working at Wal-Mart in Starkville. (T. p. 178, l. 2-3). Winters transferred from the Mississippi Wal-Mart store to a Wal-Mart store in Georgia. (T. p. 178, l. 6-8). On October 23, 2007, Winters claims that "I had a friend working at Coke in Starkville, and he was having surgery. He had a hernia. So I was coming down to support him through his surgery. He had lost his dad that year, 2007." (T. p. 178, l. 25-29, p. 179, l. 1-3).

Winters says that he saw Dora at a store on South Montgomery and 82, Highway 82, on the corner. (T. p. 179, l. 18-20). "It was just by chance. I ran into him. I think he gets off work

that morning, like he works overnight.” (T. p. 179, l. 21-24). Winters testified that he and Dora chatted. “Well, he had his little girl and his – his baby girl and his smaller, I guess five-year-old girl, and he said something, mentioned about picking up some money, actually...He was saying that he was – wanted me to go with him to pick up some money. Pretty much sounded like he was going to pick up some money.” (T. p. 179, l. 29, p. 180, l. 1-3). “He was saying that he was – wanted me to go with him to pick up some money. Pretty much sounded like he was going to pick up some money... We, I didn’t take it as a street, I was taking it as like we was doing something – and that – but he’s never, like, did anything to harm me or anything, but I didn’t take it as street slang as anything bad or anything.” (T. p. 180, l. 4-14).

Winters says “Well, he described to me somebody was going to be – someone else was going to be involved.” (T. p. 180, l. 15-18), Winters stated Dora told him Winters was to go to Tem’s Food Market in Brooksville, Mississippi. (T. p. 180, l. 19-27). “He wanted me to wait behind – on the side of the building, behind Mrs. Katina’s car.” (T. p. 180, l. 29, p. 181, l. 1). Winters says he had never met Katina. (T. p. 181, l. 2-3). Winters claims that Dora told him “she would be coming out at a certain time of the – of the morning. She would be coming out of the store with a money bag.” (T. p. 181, l. 10-19). “He told me the car that she would be – she would be going to, and he told me that she would be coming out the corner of the store. Well, he let me know by the brake lights across from – across from the store, because I could see him across from the store....It was actually brake lights to let me know that she was coming out of the store.” (T. p. 181, l. 14-22). “He was wanting me to receive the money from her.” (T. p. 181, l. 26-29).

Winters says that he discussed these matters with Dora when they left the store “and went to his house.” (T. p. 182, l. 1-4). Dora denies that Winters visited his home on the morning of

October 23, 2007. (T.p. 271, l. 16). Winters says that before he and Dora left Starkville in route to Brooksville, "He had a baby girl, which he went to drop off at the day care center. So I stayed there with his older daughter, which was five....Before he returned, he called, because I was actually waiting there with her, talking to her, waiting on her bus. But he called to ask me had the bus came, which it hadn't came." (T. p. 182, l. 21-29, p. 183, l. 1-6). "He called back and asked he had it came, and I told him no, it still hadn't came, so he told me to put his little girl on the phone. Which she got on the phone with her dad, and he told her to get in the car with me, and she got in the car with me." (T. p. 183, l. 10-15). "I was leaving, going to Brooksville, and he said he was on his way to Brooksville, also, and I was behind him. I was going to meet up with him eventually, I knew." (T. p. 183, l. 18-20).

"I met up with him. I saw his car on the highway. I came up on him on the highway before we got to Brooksville, actually." (T. p. 183, l. 29, p. 1-2). "I was behind him, and he put on his signal light and turned off on the side of the road. And he got his daughter, and he also removed my tag from my car." (T. p. 184, l. 3-7). "He actually put it in my car....From there, I followed him to Tem's, to the food market, to the place where we were going. And he pulled in at the clinic across the street, and I was sitting in my car, and she was directly – her car was directly in front of me. The car that he said that she would be going to was directly in front of me." (T. p. 84, l. 8-18).

Winters says he waited in the parking lot for five to ten minutes before Black came out of the store. (T. p. 184, l. 19-23). Winters says his view to the front door of Tem's Food Market was obstructed. (T. p. 184, l. 24-29). "When I see her coming, I know that what he said – what he said is actually true. It's like what he's saying is going together, and I knew that that's what he was talking about, he was talking about her coming out of the store." (T. p. 185, l. 22-29).

“Before she get to her car, I’m actually getting out of my car, and she’s going around to the passenger side of her car....And I – I meet up to actually get the bag from her, but it don’t seem as she knew anything about what was going on...She’s by the door, front door, of the passenger side of her vehicle...As I approach her, I observed Ms. Black attempting to back back, but at the same time she was getting rid of the – the bag she had in her hands, so she was backing back...As she was backing back, I was picking the bag up off the ground, because she – before she – she was actually throwing the bag, like getting rid of the bag out of her hand.” (T. p. 186, l. 1-29, p. 187, l. 1-2). “I picked the bag up.” (T. p. 188, l. 25-26). “I – at that point, I went to my car.” (T. p. 188, l. 27-28). “I actually drove past her car, and she was still on the side, standing up. I could see her. She was standing up.” (T. p. 189, l. 1-4).

Winters claims that he and Dora discussed what would happened after he got the money bag. (T. p. 189, l. 9-13). “He said that he would follow me away from the scene.” Winters, however, said “I didn’t see where he did. I didn’t see where he followed me.” (T. p. 189, l. 14-16). Winters claims that he and Dora met up to divide the loot. (T. p. 189, l. 17-18). “I saw him by a store on MSU campus, because when I left, I actually left through Crawford and through Sessum, and came up behind the store on – coming up behind MSU campus.” Winters claims that Dora left him a note telling him where to go. (T. p. 190, l. 22-25). “He got in my car, and he gave me a portion of the money. He took the bag, and it was also – I saw some checks in the bag. He took the bag and the checks, and gave me a portion of the money.” (T. p. 190, l. 26-29, p. 191, l. 1-3).

Winters testified that after they divided the proceeds, “at that point I put gas in my car, and I go back to Georgia.” (T. p. 191, l. 12-15). Winters said Dora contacted him before he got to the toll bridge in Tuscaloosa, Alabama. (T. p. 191, l. 16-20). “He asked me – he just asked

me where I'm at. A (sic) I said, 'I'm in Alabama,' and he hangs up the phone." (T. p. 191, l. 21-23). When Winters made it to Georgia, he says his sister telephoned him and asked him to pick up his nieces from school. (T. p. 191, l. 24-29, p. 192, l. 1). After Winters picked his nieces up from school, they stopped by the store. (T. p. 192, 2-5). "I get (sic) them snacks, and at that point the police got behind me." (T. p. 192, 6-8). "At that point I realized that the police are behind me, and he was following me, and I exited onto 285, Interstate 285, and I speed up and I slow down, and he was still behind me. And I look back in my rearview, and it was like eight or twelve of them behind me." (T. p. 192, l. 9-14). "And they came to me with guns drawn, and my nieces yelled out and were screaming." (T. p. 192, l. 15-17). Winters was arrested on the scene. (T. p. 192, l. 18-19).

Winters testified that he never formed an intent to rob Katina Black. (T. p. 189, l. 22-26, p. 207, l. 21-22). Winters says it was his understanding that he would be receiving a bag from Black. (T. p. 201, l. 19-26). "...That was my understanding that she was going to actually hand me the money bag." (T. p. 203, l. 1-4). At trial, Winters was asked, "Well, my question to you is did you have the intent to rob her, or was she going to give you that bag?" Winters responded, "I had no intention to rob her." (T. p. 201, l. 27-29, p. 205, l. 19-20). Winters says he had no weapon. Winters did not threaten Black to get her to drop the bag. (T. p. 202, l. 1-24). Winters did not ask Black for the bag. (T. p. 203, l. 24-29).

Winters says that he had a Blackberry cell phone on his waist area when he approached Black. (T. p. 187, l. 18-21). "It was clipped on my side." (T. p. 187, l. 22-24). "I actually put my hands toward her, but – and that's when she began to throw the bag and – bag back." (T. p. 187, l. 25-29). "It was a motion like if I was going to receive it, but she actually threw it, and I picked it up."

Winters says nobody was behind him when he left Tem's food market. (T. p. 209, l. 25-29, p. 210, l. 1-3). Winters says he saw a black car behind him but it did not follow him back to Crawford. (T. p. 210, l. 7-9).

SUMMARY OF ARGUMENT

- 1. THE STATE DID NOT PRESENT SUFFICIENT PROOF TO ESTABLISH THAT KATINA WILLIAMS WAS ROBBED**
- 2. THE MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT WAS IMPROPERLY DENIED**
- 3. THE PROSECUTOR MISLED THE JURY WHEN IT DID NOT INFORM THE JURY THAT BYRON WINTERS WOULD BE REWARDED FOR HIS TESTIMONY AGAINST TRENT DORA**
- 4. TRENT DORA'S TRIAL COUNSEL'S PERFORMANCE WAS SO DEFICIENT THAT IT DEPRIVED DORA OF HIS CONSTITUTIONAL RIGHT TO COUNSEL AND A FAIR AND IMPARTIAL TRIAL**
- 5. THE CUMULATIVE ERRORS IN THIS CASE DENIED TIMMS HIS RIGHT TO A FAIR TRIAL**

ARGUMENT

THE STATE DID NOT PRESENT SUFFICIENT PROOF TO ESTABLISH THAT KATINA WILLIAMS WAS ROBBED

Mississippi Code Ann. § 97-3-79 provides that “Every person who shall feloniously take or attempt to take from the person or presence the personal property of another and against his will by violence to his person or by putting such person in fear of immediate injury to his person by the exhibition of a deadly weapon shall be guilty of robbery and, upon conviction, shall be imprisoned for life...” Due process requires that the State prove each element of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). In *Croft v. State*, 992 So.2d 1151, 1158 (Miss. 2008), the Court stated that “robbery is a specific intent crime; as such, the State is required to prove a defendant took the personal property of another with the intent to permanently deprive that person of his property.” The Court also noted that felonious intent, for purposes of robbery, “means the intent to steal.” *Id.* More importantly, this Court has stated that “specific intent to steal must be shown by the testimony in robbery cases.” *Croft*, 992 So.2d at 1159, quoting *Thomas v. State*, 278 So.2d 469, 472 (Miss. 1973). In sum, this Court has stated that “there must be in the record evidence sufficient to establish each element of the crime.” *Fisher v. State*, 481 So.2d 203, 211 (Miss. 1985).

In the instant case, the State did not present any evidence that Dora entered into an agreement with Winters to rob Black. Winters testified that when he went to Tem’s Food Market on October 23, 2007, he had no intentions to rob Black. Winters testified that it was his understanding that Katina Black was going to give him a bag when she came out of Tem’s Food Market. Winters also testified that when Black came out of Tem’s Food Market, he approached her as she was walking toward her vehicle. Winters testified that Black began backing up as he

walked toward her. Winters and Black testified that she threw the bag on the ground. Winters retrieved the bag, got in his car and left the food market.

If as the State contends, Dora and Winters had hatched a plan to commit armed robbery, why are all of the elements of armed robbery absent in this case. As stated above, the State has not produce any evidence that Dora and Winters entered into an agreement to rob Black. Winters testified he had no intentions of robbing Black. He testified that he was merely going to pick up a bag from Black. There is no evidence that Winters was armed or that he displayed a weapon. Also, absent from the proof here is evidence that Winters engaged in any sort of conversation with Black before she threw the bag down. Winters did not demand the bag. Winters did not tell Black it was a holdup. Based on Winters' testimony that he and Dora did not agree to rob Tem's Food Market, as well as his testimony that he had no intentions of robbing Black, coupled with the proof that Winters did not demand the bag from Black and did not tell Black it was a holdup, the evidence is insufficient to prove that Dora committed robbery. Even if a robbery was committed, there is no proof that Dora committed it.

In this case, if the court finds that there was sufficient proof to allow a jury to determine whether Dora was guilty of robbery, the jury also should have been informed of the lesser included offense of simple assault. Simple assault is a lesser included offense of robbery. *Downs v. State*, 962 So.2d 1255, 1261 (Miss. 2007). A person is guilty of simple assault if the person "(a) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (b) negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or (c) attempts by physical menace to put another in fear of imminent serious bodily harm...." Miss. Code Ann. § 97-3-7.

Because the State did not prove that Dora and Winters entered into an agreement to rob Tem's Food Market and/or that Winters robbed Tem's Food Market, the evidence presented at trial was sufficient only to show that by physical menace Winters may have put Black in fear of imminent serious bodily harm. There also is no proof that Winters and Dora entered an agreement to commit an assault against Black.

THE TRIAL JUDGE IMPROPERLY DENIED THE MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

At the close of evidence in this case, Dora's counsel moved for a judgment notwithstanding the verdict. A motion for a judgment notwithstanding the verdict challenges the legal sufficiency of the evidence. *Davis v. State*, 18 So.3d 842, 850 (Miss. 2009). In *Bush v. State*, 895 So.2d 836, 843 (Miss. 2005), quoting *Jackson v. Virginia*, 443 U.S. 307, 315, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), the court noted "'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"

As stated above, there is no evidence that Winters and Dora reached an agreement to rob Tem's Food Market. The State failed to present proof that Winters formed an intent to commit a robbery. The State also did not present any evidence that Winters was armed, displayed a weapon, say that it was a holdup, or demand that Black give him the bag and/or money. Based on Winters' testimony that he had no intentions of committing a robbery, coupled with the proof that Winters did not tell Black that it was a holdup, did not demand money from Black, did not command Black to give him the bag she was carrying, the evidence is insufficient to prove that Winters committed a robbery. Consequently, this Court should find that the evidence presented

at trial was legally insufficient for a jury to find the essential elements of robbery beyond a reasonable doubt. In addition, this court should find that Dora is entitled to a new trial because the jury's verdict so contradicts "the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice." *Pierre v. State*, 607 So.2d 43, 54 (Miss. 1992).

**PROSECUTOR MISLED THE JURY WHEN IT DID NOT
INFORM THE JURY THAT WINTERS WOULD BE
REWARDED FOR HIS TESTIMONY AGAINST DORA**

In the instant case, when Winters was on cross examination, he was asked if he had reached a deal with the prosecutor in exchange for his testimony. Winters testified that he had not been offered a deal. The prosecutor did not inform the jury that it planned to take Winters' testimony against Dora into consideration when it was going to recommend that Winters be sentenced to three years as part of Winters' plea bargain. At no time before the jury began to deliberate was it informed of the State's intentions to give leniency to Winters in exchange for damaging testimony against Dora.

Fundamental fairness demands that prosecutors should be required to disclose deals with witnesses so that jurors can weigh fairly all matters that touch on a witness's bias. At a minimal, the prosecutor should have stated during trial that Winters could be given leniency for his testimony. *Bruce v. State*, 746 So.2d 901,909-10 (Miss. App. 1998). When the jury did not receive evidence about Winters' anticipated deal with the State, the jury was dubbed into concluding that Winters' was not bias and his testimony was not self-serving. In *Hill v. State*, 512 So.2d 883 (Miss. 1987), the Court stated that defense is entitled to present evidence of an agreement to the jury where such would tend to show bias in the testimony of the witness. While Dora was allowed to examine Winters about his deal with the State, the jury was never informed

by the State that it would be lenient toward Winters as a result of his testimony. This Court should not sanction prosecutors hiding relevant evidence from the fact finders and within a day of the close of evidence give a witness a deal that was withheld from the jury. One day after Dora was sentenced, Winters entered a guilty plea and was sentenced to three years in the custody of the MDOC.

**DORA'S TRIAL COUNSEL'S PERFORMANCE WAS SO
DEFICIENT THAT IT DEPRIVED DORA OF HIS RIGHT TO COUNSEL**

The Sixth Amendment of the United States Constitution and Article 3 § 26 of the Mississippi Constitution guarantee Dora a right to be represented by counsel. In *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d (1984), the United States Supreme Court set forth a two-part test to establish claims of ineffective assistance of counsel. First, the defendant must show that counsel's performance was deficient, and second, the defendant must show that the deficient performance prejudiced his defense. The Mississippi Supreme Court adopted the two-part test set forth in *Strickland* in *Stringer v. State*. 454 So.2d 468 (Miss. 1984). Once a defendant proves that his trial counsel's performance is deficient, he must "show a 'reasonable probability' that, but for counsel's unprofessional errors, a different outcome would have resulted at trial." *Id.* at 694, 104 S.Ct. 2052.

In the instant case, Dora's trial counsel failed to seek a jury instruction on simple assault, which is a lesser included offense of robbery. Assuming there was sufficient evidence in the record for a jury to determine if Dora had committed a crime, the jury should have been allowed to decide whether Dora committed simple assault, instead of robbery and/or armed robbery. Since Dora's theory of the case was that no robbery was committed on October 23, 2007, his

attorney should have sought and the jury should have been able to consider whether Dora was guilty of simple assault.

“Every accused has a fundamental right to have her theory of the case presented to a jury, even if the evidence is minimal. We have held that ‘it is, or course, an absolute right of an accused to have every lawful defense he asserts, even though based upon meager evidence and highly unlikely, to be submitted as a factual issue to be determined by the jury under proper instruction of the court. This Court will never permit an accused to be denied this fundamental right.’” *Chinn v. State*, 958 So.2d 1223, 1225 (Miss. 2007) (citations omitted). This Court recently has stated that “we greatly value the right of a defendant to present his theory of the case and ‘where the defendant’s proffered instruction has an evidentiary basis, properly states the law, and is the only instruction presenting his theory of the case, refusal to grant it constitutes reversible error.’” *Id.*

In the instant case, Dora’s trial counsel’s failure to seek a jury instruction on the lesser included offense of simple assault cannot be described as trial strategy because the failure to seek an instruction on the lesser included offense of simple assault encroaches on Dora’s “fundamental right to have [his] theory of the case presented to the jury, even if the evidence is minimal.” There is no question that there is a reasonable probability that, but for counsel’s unprofessional error, a different outcome would have resulted at trial. Consequently, this Court should reverse Dora’s conviction which was secured in violation of his constitutional right to be represented by competent counsel and a fair and impartial trial.


THE CUMULATIVE ERRORS IN THIS CASE DENIED DORA HIS RIGHT TO A FAIR TRIAL

When viewing the prejudicial impact of the errors set forth above, it is clear that Dora was denied his right to a fair trial. While it may be true that no one of these errors, when

considered separately and apart from the other is sufficient to justify a reversal of the case, when they are considered as a whole, it is clear that that they resulted in Dora being denied a fair trial. *Hansen v. State*, 592 So.2d. 114, 142 (Miss. 1991).

Due to the numerous errors that are lucid in the record, this Court should find that there is no way that can conclude that Dora enjoyed a fair trial by competent counsel as guaranteed by the Mississippi and United States Constitutions.

RESPECTFULLY SUBMITTED, this the 16th day of March, 2010.



Lisa M. Ross, Esq.
MSB No [REDACTED]
514E East Woodrow Wilson Ave.
P.O. Box 11264
Jackson, MS. 39283-1264

CERTIFICATE OF SERVICE

I, Lisa M. Ross, attorney for Trent Dora, certify that a true and correct copy of the above and foregoing document has been forwarded to the following, via regular mail:

Honorable James Kitchens
Circuit Court Judge
Post Office Box 311
Columbus, MS 39703

Jimmy Brown
Post Office Box 1276
Starkville, MS 39760

Forrest Allgood, District Attorney
Rhonda Hayes Ellis, Assistant District Attorney
Post Office Box 1044
Columbus, MS 39703

Jim Hood, Attorney General
Office of the Attorney General
450 High Street
Jackson, MS 39205

Trent Dora 84204
M.C.C.F
833 West Street
Holly Springs, MS 38634

SO CERTIFIED, this the 16th day of March 2010.


LISA M. ROSS