

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

**NATHANIEL COLEMAN**

**APPELLANT**

**V.**

**NO. 2008-KA-2095-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**On Appeal from the Circuit Court of Jackson County, Mississippi**

**MISSISSIPPI OFFICE OF INDIGENT APPEALS**

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**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. Nathaniel Coleman, Appellant
3. Honorable Anthony (Tony) Lawrence, III, District Attorney
4. Honorable Dale Harkey, Circuit Court Judge

This the 11<sup>th</sup> day of May, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

  
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## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF AUTHORITIES .....	iii
ISSUES .....	1
STATEMENT OF THE CASE .....	1
STATEMENT OF THE FACTS .....	2
SUMMARY OF THE CASE .....	4
ARGUMENTS .....	4
I. THE TRIAL COURT DEPRIVED COLEMAN'S RIGHT TO EFFECTIVE COUNSEL WHEN IT DENIED DEFENSE ATTORNEY'S REQUEST FOR A CONTINUANCE OF MORE THAN ONE DAY. ....	4
II. THE TRIAL COURT ERRED IN DENYING THE MOTION FOR A NEW TRIAL, AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE. ....	6
CONCLUSION .....	8
CERTIFICATE OF SERVICE .....	9

## TABLE OF AUTHORITIES

### STATE CASES

<i>Bullock v. State</i> , 447 So. 2d 1284, 1286 (Miss. 1984) .....	8
<i>Bush v. State</i> , 895 So. 2d 836, 844 (Miss. 2005) .....	6
<i>Cruthirds v. State</i> , 190 Miss. 892, 2 So. 2d 145, 146 (Miss. 1941) .....	5
<i>Forkner v. State</i> , 902 So. 2d 615, 620 (Miss. Ct. App. 2004) .....	4
<i>Lambert v. State</i> , 462 So. 2d 308, 322 (Miss. 1984) .....	6
<i>Lester v. State</i> , 692 So. 2d 755, 777 (Miss. 1997) .....	5
<i>Ross v. State</i> , 954 So. 2d 968, 1016 (Miss. 2007) .....	6

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**ISSUES**

**I. THE TRIAL COURT DEPRIVED COLEMAN'S RIGHT TO EFFECTIVE COUNSEL WHEN IT DENIED DEFENSE ATTORNEY'S REQUEST FOR A CONTINUANCE OF MORE THAN ONE DAY.**

**II. THE TRIAL COURT ERRED IN DENYING THE MOTION FOR A NEW TRIAL, AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Jackson County, Mississippi, where Nathaniel Lavell Coleman was convicted of felony murder. The Honorable Dale Harkey, Circuit Court Judge, presided over the jury trial, which began on October 27, 2008. The jury convicted Coleman and the court sentenced him to a life sentence, under the supervision of the Mississippi Department of Corrections.

Coleman petitioned the trial court for a new trial, which the court denied. Subsequently, Coleman noticed this appeal on December 15, 2008. Coleman is currently incarcerated with the Mississippi Department of Corrections.

### **STATEMENT OF THE FACTS**

On October 13, 2006, Deadrick Franklin, also known as “Head”, arrived at his home at 3520 Kimberly Drive in Moss Point, Mississippi, to find his home had been burglarized.[Tr. 206]. Instead of informing the police, Deadrick took matters into his own hands. Following a trail of his missing clothes to the neighbors’ backyard, Deadrick determined Nicholas Barnes (“Nick”) was involved in the burglary. Nick lived at 3506 Kimberly Drive, the house directly behind Deadrick’s home. [Tr. 208-09]. Armed with a handgun, Deadrick arrived at Nick’s house and demanded his possessions back. Deadrick, however, left the Barnes’ house and returned home after Nick’s mother and sister began to call family to defend Nick.

Later that afternoon, Yvette Ott, Deadrick’s nineteen- year- old cousin, walked to Deadrick’s house after visiting a friend in the neighborhood. [Tr.142, 211] As Yvette approached Deadrick’s house, she was gunned down and killed. [131] Several of Deadrick’s neighbors witnessed the shooting. [Tr. 131, 157, 301-03]

Thelma Reese and Vida Anderson, Deadrick’s next door neighbors at 3528 Kimberly Drive, were outside during the shooting. [Tr. 131, 153] Both of the ladies heard the shots and witnessed Yvette fall. [Tr. 133, 159] The shooter fled immediately after shooting Yvette, however, the women were able to determine that the shooter wore a white t-shirt. [Tr. 131, 156] Following the shooting, Deadrick came out of his home with a gun in his hand. [Tr. 135] Thelma directed him to put the gun away and to assist his cousin by getting a blanket for her body.

Tierra Dantzler lived at 3515 Kimberly Drive, directly across the street from Nick Barnes. [Tr. 295] According to Tierra, she witnessed Nick and his brother, Laterrice Barnes, run from their home to Deadrick's home that afternoon. [Tr. 300] She heard approximately six gunshots coming from the side and front of Deadrick's home. After the shooting, Tierra saw Nick and Laterrice Barnes run back toward their home. [Tr. 301] The brothers got into a gold Tahoe and took off. Tierra reported to the police that the shooter wore a white t-shirt. [Tr. 304].

Law enforcement was able to recover several shell casings on Kimberly Drive. [Tr. 111-12] Detectives also recovered several guns thought to be involved in the case. [Tr. 256, 259] Tests that were performed on the guns and shell casings were inconclusive for fingerprints. [Tr. 273, 293]

Nick Barnes was later interviewed by police and implicated the defendant- Nathaniel Coleman, his brother- Laterrice Barnes, and himself in Yvette's shooting. [Tr. 266] None of the men testified at Nathaniel's trial. [Tr. 314, 315, 323]

At trial, the State introduced a statement given by Nathaniel on the night of the shooting. [Tr. 231] In the statement, Nathaniel informed police that he never intended to commit any assault on Deadrick Franklin. [State Exhibit 45]. Although Nathaniel was armed, he went to Deadrick's home with the Barnes' brothers just to see what was going on. However, when the men arrived at Deadrick's home, Laterrice Barnes began shooting immediately. Nathaniel tried to stop Laterrice but he was uncontrollable. Nathaniel quickly realized that Laterrice was not shooting Deadrick, rather, he had shot and killed Yvette - Nathaniel's own cousin.

Kaddarius Lee corroborated the story that the Barnes were responsible for the shooting on October 13, 2006. Earlier that day, Nick Barnes asked Kaddarius to store a shotgun at his home on 3430 Kimberly Drive. [Tr. 317] Nick retrieved the gun shortly before 3:20 p.m. [Tr. 321]. Nick did not tell Kaddarius his plans for the shotgun. [Tr. 321] When Kaddarius returned from the store that

evening, Yvette was already dead and her body had been removed. [Tr. 319] A grand jury acquitted Lee of being an accessory after the fact. [Tr. 247]

### **SUMMARY OF THE CASE**

On October 13, 2006 Laterrice Barnes shot and killed Yvette Dott. He aimed at the wrong target. Laterrice went to the home of Deadrick Franklin to settle a previous altercation between Laterrice's brother, Nicholas Barnes, and Deadrick. When Laterrice got to Deadrick's house, he violently and uncontrollably shot and killed Yvette. He was not even aware, until the bullets stopped flying, that he had hit the wrong person. When questioned by police, Nicholas implicated Laterrice, Nathaniel Coleman (the defendant), and himself in the shooting death. Coleman's conviction, however, is based on weak and tenuous evidence and was against the overwhelming weight of the evidence.

Additionally, prior to trial, the defense attorney announced that he was not prepared to proceed with the case. The court allowed a one-day continuance in the matter. However, Coleman's constitutional right to effective assistance of counsel required that the court allow the defense attorney ample time to prepare an adequate defense. This one-day continuance was not enough time to properly prepare a defense.

### **ARGUMENTS**

#### **I. THE TRIAL COURT DEPRIVED COLEMAN'S RIGHT TO EFFECTIVE COUNSEL WHEN IT DENIED DEFENSE ATTORNEY'S REQUEST FOR A CONTINUANCE OF MORE THAN ONE DAY.**

##### ***i. Standard of Review***

The trial court's failure to grant a motion for continuance is reviewed under an abuse of discretion standard. *Forkner v. State*, 902 So. 2d 615, 620 (¶13) (Miss. Ct. App. 2004).

##### ***ii. The trial court's grant of the one-day continuance was insufficient time to ensure Coleman***



***would receive effective assistance of counsel.***

On July 30, 2007, Coleman, along with his co-defendants - Laterrice and Nicholas Barnes, were indicted in Cause No. 2007-10, 377. [Tr. 38] This indictment charged the defendants with deliberate design murder in the death of Yvette Dott. On June 10, 2008, the grand jury re-indicted the defendants under Cause No. 2008-10, 655. [Tr.47] This indictment charged the defendants with felony murder in Dott's death. The trial date for Cause No. 2007-10, 377 was set for October 27, 2008. [Tr. 64] However, on October 17, 2008, the State filed a notice that it would elect to proceed to trial on Cause No. 2008-10, 655 on October 27<sup>th</sup>. Neither the defense, nor the Circuit Court Administrator for Jackson County, Mississippi, was aware that the State intended to proceed on the 2008 cause number on that day. [Tr. 53] On the day of trial, the defense filed a motion for continuance with the court, citing unreadiness to proceed under the felony murder charge. [Tr. 46] Defense requested an opportunity to properly research and prepare a defense for the charged offense in Cause Number 2008-10, 655.

The Court, finding that the facts in both causes were the same, found there would be no prejudice in proceeding with the trial in Cause No. 2008-10, 655. [Tr. 64] However, the Court did agree to continue the case for one day. The Court resumed on October 29, 2008 at 9:00a.m.

The Sixth Amendment right to counsel, guaranteed by the United States Constitution, includes the defendant's entitlement to counsel that has been given adequate time to prepare his defense. *Lester v. State*, 692 So. 2d 755, 777 (Miss. 1997) (overruled on other grounds). "A fair and impartial trial includes a reasonable opportunity to prepare for trial." *Cruthirds v. State*, 190 Miss. 892, 2 So. 2d 145, 146 (Miss. 1941). The trial court deprived Coleman of his constitutional right to effective counsel when it refused to grant enough time for the defense counsel to adequately prepare for Coleman's defense.

Defense counsel informed the court that he wished he had more time to prepare for the State's theory of the case. While the defense noted it was aware that the State would eventually proceed on the felony murder indictment, it was not sure when the State would proceed. [Tr. 65] The court's grant of a continuance for one day was not adequate time for Nathaniel's attorney to prepare a defense under the felony murder statute. The court's abuse of discretion deprived Nathaniel of his constitutional right to effective assistance of counsel.

## **II. THE TRIAL COURT ERRED IN DENYING THE MOTION FOR A NEW TRIAL, AS THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

### ***i. Standard of Review***

The Mississippi Supreme Court has compared the standard of review of motions for new trials as being similar in nature to the Court sitting as a thirteenth juror. *Ross v. State*, 954 So. 2d 968, 1016 (¶127) (Miss. 2007). "A finding that the verdict was against the overwhelming weight of the evidence indicates that the Court disagrees with the jury's resolution of conflicting evidence and requires a new trial." *Id.*

The Court will order a new trial and allow the evidence to be placed before a second jury if the first jury's guilty verdict was based on "extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Id.* (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984) (Lee, J., *dissenting*). The Court will only disturb the jury's verdict when the verdict is so contrary to the overwhelming weight of the evidence that it would cause an unconscionable injustice if the verdict were allowed to stand. *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005).

***ii. Nathaniel's conviction was contrary to the overwhelming weight of the evidence.***

It is uncontested that Laterrice Barnes shot and killed Yvette Dott. It is also uncontested that, at the time, Deadrick Franklin was Laterrice's intended victim. What is contested, however, is whether Nathaniel Coleman acted in concert with Laterrice during the commission of the attempted aggravated assault.

There were no eyewitness, other than Nicholas Barnes – Nathaniel's co-defendant, that placed Nathaniel at the scene of the crime. Vida Anderson and her daughter, Thela Reese, both testified that they saw a shooter with a white shirt. [Tr. 131, 156] Neither of the women could provide any distinguishing details about the shooter. Kaddarius Lee testified that it was Nick who asked him to store a shotgun hours before the shooting. [Tr. 317] The intended assault victim, Deadrick Franklin, testified that he confronted Nick Barnes at Nick's house on 3506 Kimberly Drive. Nick and Deadrick had a prior confrontation. There was no direct connection between Deadrick and Nathaniel. Nathaniel did not even live in the neighborhood. He resided at 4737 General Ike Street in Moss Point. [Tr. State Exhibit 46] None of these witnesses placed Nathaniel in the vicinity of the shooting or witnessed Nathaniel participate any alleged retaliation against Deadrick.

Tierra Dantzler, the Barnes' next door neighbor, saw Nathaniel at the Barnes' house on the day of the shooting. However, she testified that he left before noon. [Tr. 297] The shooting did not occur until sometime around 3:30 p.m. that afternoon. [Tr. 102] Furthermore, Dantzler testified that she saw Laterrice and Nick Barnes running toward Deadrick's house and ran away from the house after the shots were fired.

During trial, the State relied heavily on Nathaniel's taped statement as evidence that he knew of and assisted in the plan to assault Deadrick. However, Nathaniel's confession alone, without proof

that he aided and abetted, is not sufficient proof to sustain his conviction. *See Bullock v. State*, 447 So. 2d 1284, 1286 (Miss. 1984) (finding there must be evidence to establish the *corpus delicti* of the crime). This case comes down to Nathaniel's statements that he was present at the time of the shooting and the accusation from his biased co-defendant, Nick Barnes, that placed him at the scene. The overwhelming weight of the evidence, however, indicates that the jury's verdict was based on weak and tenuous evidence. It would be a miscarriage of justice to allow this verdict to stand. For these reasons, Nathaniel requests a new trial.

### CONCLUSION

Nathaniel Coleman was denied effective assistance of counsel and the jury's guilty verdict amounts to a miscarriage of justice. Nathaniel prays that this Court will reverse his conviction and remand this case to the Circuit Court of Jackson County for a new trial.

Respectfully submitted,

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By:



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**CERTIFICATE OF SERVICE**


I, Erin E. Pridgen, Counsel for Nathaniel Coleman, 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 Dale Harkey  
Circuit Court Judge  
P.O. Box 0080  
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Honorable Anthony (Tony) Lawrence, III  
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This the 11<sup>th</sup> day of May, 2009.

  
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