IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONALD VANDER BOND, JR. — APPELLANT

V. — NO. 2008-KA-2152-COA

STATE OF MISSISSIPPI — APPELLEE

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# BRIEF OF THE APPELLANT

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

**RONALD VANDER BOND, JR.** **APPELLANT**

**V.** **NO. 2008-KA-2152-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. Ronald Vander Bond, Jr., Appellant
3. Honorable Cono Caranna, District Attorney
4. Honorable Roger T. Clark, Circuit Court Judge

This the 4th day of May, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### STATE CASES



### STATE STATUTES

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## STATEMENT OF THE ISSUES

ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION FOR DIRECTED VERDICT AND/OR DEFENDANT'S TENDERED PEREMPTORY INSTRUCTION FOR A DIRECTED VERDICT, THE EVIDENCE BEING INSUFFICIENT TO PROVE INTENT TO TRANSFER OR DISTRIBUTE.

ISSUE NO. 2: WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION FOR A NEW TRIAL WHERE THE WEIGHT OF THE EVIDENCE DID NOT SUPPORT THE VERDICT OF POSSESSION OF METHAMPHETAMINE WITH THE INTENT TO TRANSFER OR DISTRIBUTE.

## STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Harrison County, First Judicial District, Mississippi, Roger T. Clark, Circuit Judge presiding, and a judgement of conviction for the crimes of possession of methamphetamine with the intent to distribute and possession of precursors as an habitual offender against Roland Vander Bond, Jr., following a jury trial commencing December 3, 2008. Mr. Bond was subsequently sentenced as an habitual criminal to a term of fifteen years on

each count, with the sentences to run concurrently. Roland Vander Bond, Jr., is currently incarcerated with the Mississippi Department of Corrections.

## FACTS

Before trial, the defense, on behalf of Roland Vander Bond, Jr., ["Bond"], presented several motions in limine. The motions to bar the State from mentioning prior felonies, and to bar certain testimony relating to Rite-Aid were granted. The trial court deferred a ruling on Bond's prior exculpatory statement. (C.P. 46, T. 53-56) The State moved to amend the indictment to charge Bond as an habitual offender. (C.P. 48, T. 52) Though the convictions were on the same day, the court later ruled that the crimes were separate, occurring on different dates.

During jury selection, the defense noted that two of three State peremptory challenges were exercised on African-Americans, but ultimately, no *Batson* challenge was entered.

Kevin Brazil,["Brazil"], an officer with the Long Beach Police Department, began the State's case in chief with his testimony concerning the execution of a search warrant of premises located at 20016 Merinda Lane, Long Beach, Mississippi. (T. 62-63) An objection to the warrant's listed occupant's was sustained , but an objection for lack of foundation to the officer's testimony as to who occupied the residence was over-ruled. Actual occupancy was central to the defense of this case. When the warrant was executed, it was conceded that Bond was not present. (T. 64, 81)

Brazil the described items recovered and the location. (T. 66-77) The recovered items included pseudophedrine, acetone, lithium batteries, baggies , empty "cold tablet" boxes (T. 74) and receipts that reflected various items used in the manufacture of methamphetamine. A checkbook was found with Bonds name on it as a joint account holder with Cynthia Young. (T. 77-78) The address on the account was 20016 Merinda Lane. Brazil also testified that a vehicle at the location was registered to Bond, while the registration on Bond's other vehicle also reflected the Merinda Lane

address. (T. 78-79)

The defense then cross examined Brazil who admitted that he last saw Bond at Merinda Lane a "couple of months before." (T. 82) He could not say who actually used the check book, and further acknowledged that nothing else with Bond's name was found at the residence. (T. 83) Almost two weeks after the execution of the search warrant, on October 23, Brazil returned Bond's sunglasses and a digital camera. (T.84) Re-direct showed these items to have been seized during the execution of the search warrant. (T. 87)

The next witness, Jimmy Green, Jr., was a narcotics investigator with the Multi-Jurisdictional Task Force. (T. 88) He buttressed the testimony of Brazil as to the recovery of a loose bag of pseudophedrine. Again, it was agreed that Bond was not present and that Green had seen nothing with Bon's name on it. (T. 97)

Erik Deitrick, ["Deitrick"], testified that Cindy Young lived at the house and that Bond " was also staying with her." (T. 101) According to Deitrick, Bond's truck contained Sudafed. Detrick's cross examination continued to affirm that no officer had any direct knowledge that Bond actually continued to reside at the Merinda Lane residence. Accordingly, his direct testimony that Bond lived there was stricken. (T. 103)

The next witness's testimony was much the same. Jason Case found a modified salt cannister, but had no knowledge of Bond prior to the execution of the search warrant. (T. 109-113)

Allen Davis was qualified as an expert with knowledge of meth labs. He testified that the amount of methamphetaine found was , in his opinion, not for personal use, and that the scales found were typically used to weigh drugs for sale and distribution. Baggies were also recovered near the scales and the methamphetamine.(T. 114-123. He explained the operation of a meth lab and the ingredients and components, relating those things to the seized evidence. (T. 122-132) He could not

place the defendant at the scene, nor was he aware that any actual "cooking" had occurred. (T. 133-134)

Cynthia Young,["Young"], was indicted with Bond. She lived at the residence on Merinda Lane. She claimed she lived there together with Bond. According to her testimony, the aforementioned checkbook was theirs. She claimed the methamphetamine was "ours" and that "we" purchased the precursors, referring to Bond. (T. 136-140) She told the prosecutor that she and Bond "share[d]" the methamphetamine.(T. 139) Share certainly does not imply distribute together, but to use together.

Young pled guilty in drug court to possession, not intent to distribute. She admitted she used meth and did so until completing rehab.( T. 142) The residence at Merinda Lane was her house. She claimed Bond was still living there in October, 2004, the time of the raid. She agreed that she was the only person who wrote checks on the checking account recovered at the raid.(T. 142-146) She claimed she deposited his checks in the account.

Although she didn't recall giving a previous statement at her entry of a guilty plea to the contrary, she did recall seeing Bond "cook" methamphetamine. But she never saw him sell any. (T. 149-150) Re-direct and re-cross indicated her inconsistencies as to whether she ever actually saw Bond "cook."

An expert from the Mississippi Crime lab confirmed the seized items were precursors and methamphetamine. (T. 159-173)

An officer with the Long Beach police transported Bond after his arrest and claimed that Bond stated he lived at Merinda Lane, but on cross examination. An objection to this critical evidence being based on guessing was sustained. The officer was then permitted to refresh his memory via a booking form. However, cross examination revealed t6hat this officer had not filled

out the booking form, and again an objection to the testimony was sustained, but not stricken as requested (T. 177)

The State rested and the trial court informed Bond of his rights under *Culberson.* (T. 178-179) The defense moved for a directed verdict on the issue of intent to distribute, arguing weight alone is insufficient evidence of intent. The court ruled that sufficient evince existed being weight baggies and scales. (T. 181)

The defense opened its case with Shannon Mercer who testified that at the time of the execution of the search warrant, Bond no longer lived at Merinda Lane, but instead was residing with Shannon Owens. He knew Bond's personal effects to be located at Owens . (T. 184-186)
On cross examination, the State tried to impeach Mercer with questions concerning why he had not previously told the police about Bond's residency at Owen's. An objection was overruled.(T. 186-187)

Jason Mills was also a casual friend of Bond who knew him to be living at Owen's home at the time of the raid. He testified that Bond's personal effects were at The room he had at Owen's residence. (T. 192-197)

Shannon Owen's confirmed the testimony of the prior witnesses. Bond had moved into a spare room of his at the time of the execution of the search warrant. Bond was not required to pay rent, but had helped with the power bill. The State also attempted to impeach Owen on his failure to come forward. He did not know why Bond would have been arrested, but did know the charge concerned a "meth lab." (T. 199-208)

Roland Bond exercised his right to testify on his own behalf. He told the jury he had a relationship with Cynthia Young, but he was breaking it off due to spending an unaccounted for $6,000.00. (T. 210-213) He began to live at Owen's several nights a week until he had fully moved

in by October , 2004. He left the truck behind, letting Cynthia Young dive it and because it had been retrieved by Cynthia from a borrower of the truck. (T. 216)

On cross examination, Bond asserted his move in with Owen was completed in September of 2004, although he had some belongings remaining at Merinda Lane. (T. 224). He said he also spent time at his parent's home around the time of the raid. Bond denied making any statement's at his arrest concerning being coerced into cooking and denied knowing of the drugs or precursors.

Cynthia's father, William Donaldson, testified that he acquired the house, had it tested for hazardous materials and that none were found. On examination by the State, he explained he had done extensive work to the house and that he observed Bond move out various personal items after the date of the execution of the search warrant. (T. 237-242)

After the defense rested, the State put on certain rebuttal proofs concerning Bond's purported statement to Officer Brazil. Objection to using the prior statement was overruled since it had been denied by the defendant during his direct testimony. (T. 246-248)

The State then put on Dave Stepbro of the district attorneys office, who testified over objection, that Owen had not returned his call.

The motion for a directed verdict was denied. And the attorney's and trial court went over the proposed jury instructions. After a verdict of guilty, Bond was sentenced to two concurrent terms of fifteen years as an habitual offender. At the sentencing hearing, Bond testified the convictions arose out of the same incident; that the possession of stolen property was the property taken in the burglary. The trial court found to the contrary.

## SUMMARY OF THE ARGUMENT

Quantity of a controlled substance, supported only by the presence of scales and baggies, is insufficient to prove the intent to distribute especially where the State's witness, a co-indictee,

testified that Bond was a user, but that she had never observed Appellant Bond sell methamphetamine.

The weight of the evidence did not support the verdict of possession with intent to distribute where the State's "star" witness testified contrary to Appellant Bond having sold methamphetamine and the evidence supporting sale was mere supposition that the relatively small quantity of methamphetamine, combined only with scales and baggies.

**ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION FOR DIRECTED VERDICT AND/OR DEFENDANT'S TENDERED PEREMPTORY INSTRUCTION FOR A DIRECTED VERDICT, THE EVIDENCE BEING INSUFFICIENT TO PROVE INTENT TO TRANSFER OR DISTRIBUTE.**

At the close of the trial, defendant both moved for a directed verdict (T. 255) and presented a jury instruction instructing the jury to find Bond not guilty of possession with intent. (C.P. 74) Bond then timely filed his "Motion For A New Trial, Or In The Alternative, To Find A Judgement Notwithstanding The Verdict ." (C.P. 87) All were denied by the trial court.

The standard of review to be utilized in the denial of a motion for directed verdict or a motion for a judgement notwithstanding the verdict is:

> this Court considers all of the evidence in the light most favorable to the State and gives the State the benefit of all favorable inferences that may reasonably be drawn from the evidence."

*Parks v. State,* 884 So.2d 738, 743-744 (Miss. 2004) However, the Court is required to reverse where, applying such a standard, reasonable men could not have arrived at a guilty verdict. Such is the instance herein.

Roland Vander Bond, along with Cynthia Young were indicted for the crimes of Possession of methamphetamine with the intent to distribute or transfer. The evidence adduced by the State were not only insufficient to support a jury verdict on the issue of intent, but such a verdict was

contradictory to the State's own proofs.

The only evidence of intent produced at trial was purely self contradictory opinion of a narcotics officer, with a stake in the outcome of the case. Allen Davis, ["Davis"], an officer with the Mississippi Bureau of Narcotics, who was directly involved in the execution of the search warrant on Merinda Lane. He was qualified as an expert in the fields "methamphetamine labs and illegal narcotics activities." (T. 118) Davis collected the methamphetamine from the residence, which he testified weighed " an ounce." (T. 120) He went on to say such an amount was not, in his opinion, an amount consistent with personal use. He based that assumption on his opinion that a user uses between ½ to 1 gram per day. An ounce is deemed to weigh thirty grams. M.C.A § 41-29-139. Thus, according to Agent Davis' testimony, the amount of recovered methamphetamine constituted between 30 and 60 doses. It should the be recalled that this amount was possessed by two users and thus the amount of daily use should be cut in half, as it applies to Bond. That results in a personal supply of only 15 to 30 days. But, the amount used by Agent Davis was an incorrect amount. The weight of the recovered methamphetamine, as testified to by the technician from the Mississippi Crime lab was a total of 24.44 grams, significantly less than an ounce. This would result in a total number of doses as a number between 24.44 and 48.88, again divided by two. This is merely an amount that would be a 12 day to 24 day supply for each user. Hardly an amount consistent with distribution versus an amount for personal use.

"Proof of possession with an intent to distribute or sell should not be based solely upon surmise or suspicion. There must be evidentiary facts which will rationally produce in the minds of jurors a certainty, a conviction beyond reasonable doubt that the defendant did in actual fact intend to distribute or sell the cocaine, not that he might have such intent. It must be evidence in which a reasonable jury can sink its teeth." *Stringfield v. State*, 588 So.2d 438, 440 (Miss.1991) A fourteen

day supply in *Stringfield, Id.* did not constitute aa amount that would presumptively imply an intent to distribute. Furthermore, as held in a long established line of cases, quantity that could reasonably be deemed an amount consistent with personal use cannot be presumed to be held for distribution, even when accompanied with scales and baggies. *Jones v. State,* 635 So. 2d 884, 889-890 (Miss. 1994), *Hollingsworth v. State*, 392 So. 2d 515, 517-518 (Miss. 1981),

A long line of cases also expresses the need for proofs that the confiscated quantity of controlled substance must be a "large" amount that is "far beyond" what would be usually deemed to be an amount for personal use. *Blissett v. State,* 754, So. 2d 1242, 1244-1245 (Miss. 2000)

More importantly, the key witness for the State, Cynthia Young the co-indictee and purportedly the co-resident of the Merinda Lane residence, not only did not testify to any intent to distribute, but she told the jury that she had never seen "Buddy" transfer or sell any methamphetamine. This contradicts any notion of transfer and relegates such a notion to mere suspicion of the police. The evidence only points to a mere suspicion of intent, which is insufficient to support this conviction. *Thomas v. State*, 591 So.2d 837, 839 (Miss. 1991). Normally, where the State is relying on such minimal evidence as a modest weight with baggies and scales, proof of prior sales or a current transfer, perhaps in a place where sales normally occur, is necessary. *Mitchell v. State,* 754 So. 2d 519 (Miss. App. 1999), *Boyd v. State,* 634 So. 2d 113 (Miss. 1994) No such evidence was adduced or even arguable. Again, the only evidence is to the contrary, Bond did not transfer methamphetamine.

Given the evidence herein, no reasonable juror should have found Bond guilty of possession with intent to distribute or transfer. Such evidence is contradicted by the proofs and not more than mere supposition or suspicion as it stands.

Accordingly, this Honorable Court should reverse and render Bond's conviction for possession with intent.

**ISSUE NO. 2: WHETHER THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION FOR A NEW TRIAL WHERE THE WEIGHT OF THE EVIDENCE DID NOT SUPPORT THE VERDICT OF POSSESSION OF METHAMPHETAMINE WITH THE INTENT TO TRANSFER OR DISTRIBUTE.**

Bond also argues that the verdict of possession of methamphetamine with intent to distribute was contrary to the weight of the evidence. Bond timely filed a motion for a new trial which was denied (C. P. 87-90, 96) A motion for a new trial goes to the weight of the evidence as decided by the jury. The standard of review is as follows:

> Moreover, the challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion.
>
> ****
>
> New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State.

*McClain v. State,* 625 So.2d 774, 781 (Miss. 1993) As the evidence herein was overwhelmingly contrary to the issue of intent to distribute it is urged that this Honorable Court reverse and remand this case.

As set forth in the argument above, in Issue No. 1, which is adopted herein by reference, the proofs of this case simply do not support any intent to distribute. A review of the proofs and more importantly the absence of proofs, when theoretically placed on the balance scales of justice tilt conclusively to the conclusion that "the trial court abused its discretion and that a "miscarriage of justice would occur" if Bond is not granted a new trial. *Windham v. State*, 800 So. 2d 1257, 1264 Miss. App. 2001).

The State's case against Bond regarding the issue of intent relied upon solely upon the opinion evidence offered by Agent Davis, that the amount of methamphetamine, in combination with one scale and some baggies, indicated that Bond and Young possessed methamphetamine with the intention that it be transferred to others. As shown above this opinion was based upon an errant assumption as to the weight.

Counter balanced against such suppositional and minimal proofs were the following facts. No sales or transactions were observed. "[T]he State's proof was unequivocal in establishing that no sale or attempted sale took place." *Stringer v. State,* 557 So.2d 796, 798 (Miss.1990) While evidence of intent may be inferred by circumstantial evidence, such should not trump direct evidence in the State's case. Though the police had observed the residence at Merinda Lane, no testimony was presented that any one had ever observed those things such as excess traffic that are associated with sale or distribution. *Jackson v. State*, 580 Sop. 2d 1217 (Miss. 1991)Bond did not "toss" the drugs nor run, he wasn't even there . *Edwards v. State,* 615 So. 2d 590, 595 (Miss. 1993) There was no cash offered into evidence. While the presence of cash can be an indicator of intent, it should be equally as convincing, that the absence of cash is evidence of personal usage. *Breckenridge v. State*, 472 So.2d 373 (Miss. 1985)

The State's evidence, in deciding a weight argument, must be accepted as true where it supports the verdict. *Dilworth v. State*, 909 So. 2d 731, 735 (Miss. 2005) Should any less standard be applied to the State's evidence which evinces the lack of intent? Appellant urges not.

Thus, the trial court abused it's discretion in denying Bond's motion for a new trial. And this cause should be reversed and remanded.

## CONCLUSION

Appellant respectfully submits that for the reasons set forth above, this case should be reversed and rendered as to count one of the indictment, or in the alternative, this court should reverse and remand for a new trial.

Respectfully submitted,

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BY: _____

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## CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for Ronald Vander Bond, Jr., 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:

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This the 4th day of May, 2009.

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