Serial: 153059

IN THE SUPREME COURT OF MISSISSIPPI

No. 2008-KP-01699

EDGAR PATTON — APPELLANT

-VS-

STATE OF MISSISSIPPI — APPELLEE

.....

DEFENDANT'S APPELLANT BRIEF

.....

CERTIFICATE OF INTERESTED PERSONS

The undersigned pro se appellant 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 Court of appeals may evaluate possible disqualifications of recusal:

Marion County District Attorney
500 Courthouse Square, Suite 3
Columbia, MS 39429

Hon. R.I. Prichard III
Circuit Court Judge
P.O. Box 0488
Purvis, MS. 39475-0488

This, the 3rd day of April, 2009

EDGAR PATTON, PRO SE, APPELLANT
240 HUTSON/MORRIS ROAD
COLUMBIA, MS 39429

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

STATEMENT OF ISSUES

The Appellant, Edgar Patton, assigns as error, ten issues arising from the Trial Court:

1. Fatally defective Indictment and erroneous denial of Appellant's Motions to Dismiss.
2. Whether the Trial Court denied Appellants Sixth Amendment Right to Counsel.
3. Whether the trial Court erred by allowing the Prosecution to commit Discovery Violations.
4. Whether the Trial Court erred by not Overruling Appellant's Motions until the very day of trial.
5. Whether the Trial Court erred by not calling Albert Lee Preston, and not allowing the Appellant to call Preston, who was the lead investigator.
6. Whether the Trial Court erred by allowing the Prosecutor to vouch for the witnesses credibility.
7. Whether the Trial Court erred in giving the Appearance of Bias in favor of the Prosecution, particularly during Appellant's cross examination of Isodore Newsom and Pricilla Newsom.
8. Whether the jury verdict finding Appellant guilty was against overwhelming weight of the evidence.
9. Whether the Trial Court erred during jury instructions.

STATEMENT OF THE CASE

On September 26, 2006, the Appellant Edgar Patton, (hereinafter "Patton"), was indicted in criminal cause K06-0198P on one count of "False Pretense". The Original indictment did not charge "Felony False Pretense" and was never amended to the higher charge of "Felony False Pretense in which carries a more serious penalty if convicted.

On July 26, 2007 Patton filled a number of motions with the Trial Court in this order (1) Motion to sever, (2) Notice of Discovery. (3) Motion for Postponing Trial Date. (4) Notice of Motion To Dismiss. (5) Motion To Dismiss for Failure to State a Claim and Failure to Respond. (6) Motion for Bill of Particulars. (7) Motion To Disqualify Morris Sweatt as ADA in his case. (8) **Motion to Dismiss Indictment.** All of which was not overruled and given to Patton until the very day of trial.

On August 28, 2008, Patton was convicted of what he assumed to be "Felony False Pretense", not "False Pretense" as the Indictment states, and which was never amended to increase the permissible punishment to "Felony False Pretense". As a result Patton was sentenced to 10 years in prison the maximum sentence for the crime of "felony false pretense".

On September 2, 2008, Patton filed a Motion to Waive Notice of Motions, and Notice of Appeal. He also filed a Motion to Stay sentencing Hearing and Requested and Appeal Bond, and Motion for New Trial. All of which was denied by the Trial Court as premature.

On September 9, 2008 Patton filed a Motion to Vacate Trial Conviction, a Motion for New Trial or Reversal of Judgment all of which were denied by the Trial Court.

On September 30, 2008 Patton filed his Notice of Appeal.

SUMMARY OF THE ARGUMENT

The Appellant argues that he was not put on notice that he was charged with "Felony False Pretense" not "False Pretense" as the Indictment charged him with, resulting in unfair surprise, in the Supreme Court of the United States stated: "to be sufficient and indictment must set forth the essential elements of the offense," further, "(i)t is generally sufficient that an indictment set forth the offense in words of the statue itself, as long as "those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished " .

Additionally, Patton contends that the Indictment was defective and fatally flawed in that it violated his ***Fifth Amendment Rights and Fed. R. Crim.. P. 7(c) (1)*** in that the Indictment lacked sufficient information to prepare double jeopardy defense. Also the Indictment was totally contrary to the evidence presented.

The Appellant argues that the Trial Court lacked Jurisdiction to try his case, in that the Trial Court violated his ***Fifth Amendment Right to due process, Rule 28 U.S.C. 1330-1369*** and ***28 U.S.C., 1441-1452*** state: a judgment from the court that did not have subject-matter jurisdiction is forever a nullity. Further subject-matter jurisdiction, personal or territorial jurisdiction and adequate notice are the most fundamental Constitutional requirements for a valid judgment.

The Appellant argues that his ***Sixth Amendment Rights*** to council was violated.

The Appellant argues that Trial Court did not call or allowed him to call Detective Albert Lee Preston to the stand since he was the only investigator that originally filed or caused the charge against the Appellant to be filed.

The Appellant argues that the Prosecutor vouched for the witness credibility in closing arguments in front of the jury. In ***United States v. Rudberg,122f.3d 1199 (9th Cir. 1997)*** found reversible error and stated: "a prosecutor vouched for a witness credibility in closing argument."

The Appellant argues the jury verdict finding him guilty was against the overwhelming weight of the evidence. In ***Cromeans v. State, 261 So. 2d 453 (Miss.1972); Marr v. State, 248 Miss. 281, 159 So. 2d 167 (1963); and Freeman v. State, supra [228 Miss. 687, 89 So. 2d 716(1956)].*** The Court has stated: ***in per. part " we have further said that we will not set aside a guilty verdict, absent other error, unless it is clearly a result of prejudice, bias or fraud, or is manifestly against the weight of credible evidence."*** The evidence presented to the Grand Jury is **unclear** they returned a indictment for a "Crimson" mobile home, when all the evidence that the prosecution presented was for a **"Redman"** in total contradiction to each other, which indicate there was fraud committed upon the Court.

The Appellant argues that the Trial Court gave the appearance of biasness in favor of the prosecution, particularly during his cross examination of Isodore Newsom and Pricilla Newsom. In ***Thompson v. State, 468 So.2d 852, 854 (Miss. 1995),*** the Court said:

[It is a matter of common knowledge that jurors...are very susceptible To the influence of the judge...jurors watch his conduct, and give attention to his language, that they may, if possible, ascertain his leaning to one side or the other, which, if known, often largely influence their verdict. He cannot be too careful and guarded in language and conduct in the presence of the jury, to avoid prejudice to either party.]

The Appellant argues he was prejudice beyond repair when the Trial Court waited until the very day of trial to overrule all of his motions.

The Appellant argues he objected during an in-chamber conference, for which there appears to be no record from the Court Reporter. Appellant expressly objected to the jury

instruction No. 5 in particularly the last paragraph which reads, " if you find from the evidence in this case that Edgar Patton did not obtain eight hundred dollars ($800.00) from Prisicilla Watts Newsom and Isodore Newsom as described above, then you must find Edgar Patton not guilty". Edgar Patton conceded that he did in fact receive $800.00 but as the evidence3 show it was for his "Redman" mobile home, which in fact the Newsom's took anyway, form his property, in which the Appellant pressed charges against them for Grand Larceny.

ARGUMENT 1

FATALLY DEFECTIVE INDICTMENT AND ERRONEOUS DENIAL OF APPELLANT'S MOTION TO DISMISS

The Circuit Court erred in not dismissing the indictment as a matter of law. In ***State v. Rogers 123 N.C.App.359,473 S.E.2d 969 (1996)*** in a unanimous panel in which the judgment was vacated stated in per part: "as a matter of law a person cannot be prosecuted on an indictment for obtaining property by false pretense where the indictment alleges nothing more than the defendant **[did intentionally, willfully, designedly with intent to cheat and defraud"**. ***In Vince v. State, 844 So. 2d 510 (Miss. App. 2003).*** The Court ruled: **" Because the defect in the indictment in this case was so fundamental and because of the importance to the criminal process of a properly drawn indictment that fully acquaints the defendant with the nature of the accusation brought against him, we note the matter as plain error and conclude that it requires us to reverse *Vince's* sentence.** The indictment against Patton reads as follows: **" Edgar Patton did intentionally, willfully, designedly with the intent to cheat and defraud Priscilla Watts Newsom and Isadore Newsom by selling to Priscilla Watts Newsom and Isodore Newsom a 1981 Crimson 14 x 65 trailer bearing serial number ALW12614777 that the defendant did not own and the defendant Edgar Patton did obtain money from the said Priscilla Watts Newsom and Idadore Newsom as payment on said trailer, contrary to and in violation of Section 97-19-39 of the Mississippi Code of 1972, amended, against the peace and dignity of the State of Mississippi.(see R. page 4)** this indictment apparently did not take into account that all of the evidence which the indictment allege, but all the facts proved before during and after trial, was for Patton's "Redman" mobile home even all the creditable evidence was the contract, the bill of sale and the sales receipt, all was for a "Redman" **(see R. exhibit page, 34, 35 and 36).** Under ***Rule 60(b), (1) and (3)*** which Patton pressed ***grand larceny*** charges against the Newsom's for stealing his "Redman" mobile home from his property a fact that was withheld and Patton did not learn of until he spoke with Kippy Newsom, Isodore Newsom's nephew, when he was incarcerated at the MWCF for the month after he was convicted of "Felony False Pretense". Patton knew his mobile home had

been stolen but he did not know who stole it, until Kippy Newsom confirmed that Isodore and Pricilla Newsom did in fact sell the mobile home because they had the "Bill of Sale" that Patton gave them, and he believed they sold the "Redman" to someone who lived in a community call Second Hopewell, which is a neighboring community of Patton. The indictment was a fraud and fraudulently obtained and under which is a direct violation of ***Rule 60 (1).*** In ***Vince v. State, 844 So.2d510 (Miss. App.2003)*** state in per part: **If the State used a document that is false or fraudulent the trial court should have stricken it and not used in support of any motion, for the trial court to do so would be plain error. In Morgan v. State, cite. 966 so 2d 2004 Miss. App. 2007; simply state:** "The general Rule is that a trial conviction by jury or a guilty plea waives all defect in the indictment with two exceptions **(1).** Failure to charge an essential element of a criminal offense and **(2).** Subject matter jurisdiction. The indictment was absent all of the essential elements of the charge of "False Pretense" it was obtained through fraud upon the Court it violated ***Rule 60 (b) (1)*** and **(3)** which rendered the indictment fatally defective, and with no valid indictment the trial court lacked jurisdiction to sentence Patton. In ***United States v. Du Bo, 186 F. 3d 1177 (9th Cir. 1999)*** established the "automatic reversal rule" which rest on three premises: the Court in Du Bo held that, "if properly challenged prior to trial, an indictment's complete failure to recite an essential element of the charged offense is...a fatal flaw requiring dismissal of the indictment. It is further noted that an indictment is the foundation of the criminal due process in which everything done after the indictment is handed down, will control every aspect of the criminal process, thus if the indictment is not valid there can be no valid conviction or sentencing . ***" 186f. 3d at 1179.*** Further state, "and We support that automatic reversal rule with three premises: 1. Jurisdictional, 2. Omissions, from grand jury indictment, unlike omissions from jury instructions, simply are not susceptible to harmless error review, ***Du Bo, 186 F. 3d at 1179-80.*** **3.** We expressed desire to give defendants an incentive to bring timely objections. We limited the automatic reversal rule to timely challenges, reasoning that under harmless error review, filing a pretrial motion would be "self defeating" because the very filing of the motion would demonstrate hat the defendant had notice of the missing element." ***Id, at 1180 n.3.***

ARGUMENT II

THE CIRCUIT COURT ERRED IN VIOLATING PATTON'S SIXTH AMENDMENT RIGHT TO COUNSEL AND ALLOWING A CRIMINAL DEFENDANT SELF-REPRESENTATION AND HE DID NOT KNOWINGLY, INTELLIGENTLY AND INFORMATIVELY WAIVE HIS RIGHT TO A LAWYER

The Circuit Court erred in allowing a criminal defendant self-representation and he did not knowingly, intelligently and informatively sign or waive his right to a lawyer, where the Court never informed him of the charge against him and misstated or omitted the potential sentence he faced, which in tern violated his Sixth Amendment Right to Counsel and Due Process. In ***United States v. Foster, 05-50410*** the Appellate Court ruled "the court failed to fulfill its obligation to ensure he ***[Foster]*** understood the possible penalties." Judge Clifton and Smith concurred in the opinion and further stated "of course, Foster may have correctly understood the charges against him and the potential penalties, but the Government failed to Prove that he did so." In **United States v. Cash, 47f. 3d 1083 (11th Cir. 1995)** the Court further held defendant could not waive counsel without proper finding by the court." In ***United States v. Keen, 104f. 3d 1111 (9th Cir. 1996)*** held " a court did not sufficiently explain to defendant the danger of pro se representation, in ***United States v. Taylor, 113 f. 3d 1136 (10th Cir. 1997)*** stated: " the court did not assure a proper waiver of counsel. And further stated: " Plain error is "so basic, so prejudicial, so lacking in its elements that justice cannot have been done[.] In ***State v. McCastle, 676 F. 2d 995, 1002 (4th Cir.) (footnote omitted), cert denied, 459 U.S. 1018, 74 L. Ed. 2d 513 (1982). Section 15-1242 provides***: " a defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

-1- Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is entitled;

-2- Understand and appreciates the consequences of this decision; and

-3- Comprehends the nature of the charges and proceedings and range of permissible punishments he face.

The record is clear, the Trial Court never explain these basic due process rights to Patton.

Under Miss. R. Crim. P. 8.05, is even more broad I contains 5 elements that must be followed and made part of the record, in which the trial Judge did not follow. Under a Writ of error Coram Nobis, which is broad ranging, particularly giving cognizance to violation of constitutional rights occurring is criminal trials, and it becomes perrative upon affirmance of conviction in the Mississippi Supreme Court. King v, Cook (1968, ND miss.) 287 F. Supp. 269. in Scott v. State (1966, Miss.) 190 So. 2d 875, appeal after remand (1968, Miss.) 188 So. 2d 239. in which the plea was vacated and remanded for new trial because Scott did not have counsel for his own defense, and had not competently and intelligently waived the right to counsel.

(see Tran. P. 96, line 15-16), also (Tran. P. 105, line 8-12 and line 27-28) (Tran. P. 106, line 1-19).

ARGUMENT III

TRIAL COURT ERRED BY ALLOWING THE PROSECUTION TO COMMIT DISCOVERY VIOLATIONS

The Trial Court erred during discovery by allowing the prosecution to withhold exculpatory evidence, in ***United States v. Alzate, 47 f. 3d 1103 (11th Cir. 1995)*** found reversible error and stated: "a prosecutor withheld exculpatory evidence" and vacated Alzate's conviction. Reasoning that the discovery process is an ongoing process for the wheels of justice that are crucial to due process and therefore is not flexible. The prosecution withheld the fact that the Newsom's had in fact purchased the "Crimson" trailer from Patrina Harvey and did not disclose this fact to Patton and mentioned throughout testimony that Newsom had done so, and also the pictures offered by the State was after defacto evidence in which the prosecution had taken after the trailer had been moved to its new location and not taken at the address at the time of the controversy. This in tern prejudiced Patton beyond repair, further the prosecution never went to Patton's mobile home located on his property to take pictures, get serial numbers or even get the name brand of Patton's mobile home, which by all of the witnesses' testimony offered by the state and by Patton stated that there was in fact a beige and brown mobile home on Patton's property, and no one took the time and just get the basic information from Patton's mobile home, which would have settled this matter in its entirety this is and was a undisputed fact. In ***United States v. Barnes, 49 f. 3d 1144 (6th Cir. 1995)*** held reversible error and stated: "request for discovery of extraneous evidence created a continuing duty to disclose." In ***United States v. Foster, 129 f. 3d 949 (6th Cir. 1997)*** held reversible error and stated: "exculpatory grand jury testimony should have been admitted at trial." In fact Patton requested the grand jury proceeding and the district attorney's office did not object, in fact the trial court told the district attorney to "give the defendant whatever he requested and whatever they had." In ***United States v. Flores Chapa, 48 f. 3d 156 (5th Cir. 1995)*** held reversible error and stated: "the prosecutor referred to evidence that was not

disclosed to Patton, the fact that the Newsom's had paid $2,000.00 for the "Crimson" trailer and that Patrina Harvey did not subtract the $800.00 that the Newsom's had paid Patton as a down payment for his "Redman" mobile home.

(see Tran. P. 156, line 1-16), also (Tran. P. 160, line 19-24, P. 161, line 4-18) see (Tran. P. 110, line 16-28) see (tran. P. 134, line 20-29) see (tran. P. 135, line 1-2)

ARGUMENT IV

THE TRIAL COURT ERRED BY NOT OVERRULING PATTON'S MOTIONS UNTIL THE VERY DAY OF TRIAL

On July 26, 2007 Patton filed a number of motions with the Trial Court in this order (1) Motion to Sever, (2) Notice of Discovery (3) Notice of Motion to Dismiss (4) Motion Dismiss (5) Motion for Bill of Particulars (6) Motion to Disqualify Morris Sweatt as ADA in his case (7) Motion to dismiss Indictment, all of which was not overruled and given to Patton until the very day of trial, which prejudice Patton beyond repair. (see Rec. p. 40-41).

ARGUMENT V

THE TRIAL COURT ERRED BY NOT CALLING ALBERT LEE PRESTON AND NOT ALLOWING PATTON TO CALL PRESTON WHO WAS THE LEAD INVESTIGATOR IN THIS CASE

The Trial Court erred by not calling and not allowing Patton to call Albert Lee Preston the lead investigator for the Columbia Police Department who according to William Billingsley who at the time worked with the Marion County Sheriff's Office and claimed through out his testimony that Preston worked the entire file and gave it to him to turn over to the District Attorney's Office. In ***Swhlewitz v. United States, 169 f. 3d 1003 (6th Cir. 1996) held*** reversible error and stated: "defendant could exposed bias of witness involved in investigation, had he been allowed to cross examine a key witness." Had Patton been allowed to call Preston to the witness stand or cross he would have exposed Pricilla Newsom and Albert Preston' prior relationship and the bias he had in this case. During side bar Patton extraneously expressed the need to call Preston which was by the state's own admission was the lead investigator and the agent that started this entire process. It is well settled law that the State must assist the Pro se defendant with the procurement of his witness's to be called at trial this is and undisputed fact. And under the Sixth Amendment due process right, the Appellant has compulsory process for obtaining witness's in his favor. The Appellant also named Preston as on of his witnesses.

See (Tran. P. 157, line 26-29, p. 158, line 1-29, p. 159, line 1-10).

ARGUMENT VI

THE TRIAL COURT ERRED BY ALLOWING THE PROSECUTOR TO VOUCH FOR THE WITNESS'S CREDIBILITY

The Trial Court erred by allowing the prosecutor to vouch for a witness credibility in front of the jury. In United States v. Rudberg, 122 f. 3d 1199 (9th Cir. 1997) found reversible error and stated: " a prosecutor vouched for a witness credibility in closing argument." And further stated, "the Court and the District Attorney's office is a branch of public trust and juror's tend to rely upon that trust when their told the weight of that office is saying their witness is trust worthy. During closing the prosecutor remarked that the witness's contradictions with each other was because they all were telling the truth. The fact is that the States star witness Pricilla (Watts) Newsom is a convicted felon, in which she was convicted by the Marion County District Attorney's Office, the very same office that now calls her a credible witness. The trial Court erred by refusing to allow the Appellant to impeach the witness and by allowing the witness to ask questions, such as when the Appellant asked, "have you been convicted of a crime?" and Watts replied with a question, and asked "is that relevant?", and the Trial Court allowed Watts to withhold the fact that she had been convicted of a prior felony, in which the Appellant could have used to impeach the credibility of this star witness. In Carter v. Rafferty, 621 f. Supp. 533 [D.N.J. 1985] in which Judge Sarokin, overturned Carter's conviction and ordered his "immediate release from custody with prejudice." Also the prosecutor should have disclosed during discovery the fact that their star witness was a convicted felon, under Rule 609 (a)(1). See Peterson v. State, 518 So 2d 632 (Miss. 1987), state: "the probative value of a prior conviction outweighs the prejudicial effects, when impeaching a witness.

Rule 609 (a)(2) took the rule a step further by stating, a witness may be impeached when a prior conviction involved dishonesty or false statement, whether felonies or misdemeanors, other than misdemeanor traffic offense. And further stated, provable convictions under 609 (a) include convictions from any jurisdiction, federal or state. Also under Rule 609 (a) allows you impeach a witness if they have committed any crime involving dishonesty (i.e. larceny-by-trick, embezzlement, fraud, etc.) then the prior conviction is admissible under every circumstance.

See (Tran. P. 137, line 5-28, p. 138, line 10-28).

ARGUMENT VII

THE TRIAL COURT ERRED IN GIVING THE APPEARANCE OF BIAS IN FAVOR OF THE PROSECUTION, PARTICULARLY DURING PATTON'S CROSS EXAMINATION ISODORE NEWSOM AND PRICILLA NEWSOM

The Trial Court erred by giving the appearance of biasness in favor of the prosecution, particularly during his cross examination of Isodore Newsom and Pricilla Newsom. In ***Thompson v. State, 468 So. 2d 852, 854 (Miss. 1995),*** the court said: [" it is a matter of common knowledge that jurors...are very susceptible to the influence of the judge...jurors watch his conduct, and give attention to his language, that they may, if possible, ascertain his leaning to one side or the other, which, if known, often largely influence their verdict. He cannot be too careful and guarded in language and conduct in the presence of the jury, to avoid prejudice to either party.]

ARGUMENT VIII

WHETHER THE JURY VERDICT FINDING PATTON GUILTY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

Patton argues the jury verdict finding him guilty was against the overwhelming weight of the evidence. In ***Cromeans v. State, 261 So.2d 453 (Miss. 1972); Marr v. State, 248 Miss. 281, 159 So 2d 167 (1963); and Freeman v. State, supra [228 Miss. 687, 89 So.2d 716 (1956)].*** The Court has stated in per part: "we have further said that we will not set aside a guilty verdict, absent other error, unless it is clearly a result of prejudice, bias or fraud, or is manifestly against the weight of credible evidence." The District Attorney presented to a grand jury is riddled and tainted with fraud, misrepresentations and omissions, further it is unclear to Patton how a grand jury returned an indictment for him trying to sale a "Crimson" trailer when every shred of the states very own evidence was for a "Redman" which is in total contradiction to each other, which indicate fraud was committed upon the court.

ARGUMENT IX

PATTON ARGUES THAT THE TRIAL COURT ERRED DURING JURY INSTRUCTIONS AND VIOLATED PATTON'S FIFTH AND FOURTEENTH AMENDMENT RIGHTS

Patton argues he objected during an in-chamber conference, for which there appears to be no record according to the Court reporter she did not have the in-conference transcript which Patton was under the impression that all proceedings would transcribed including the in-chamber conference in which a number of objections were made, but according to the Court Reporter this belief was not so. Patton requested the in-chamber transcript aware somewhat of the "raise or waive" rule, but apparently there is no such record. Patton expressly objected to the **jury instruction No 5** in particularly the last paragraph which read, if you find from the evidence in this case that Edgar Patton did not obtain eight hundred dollars ($800.00) from Prisicilla Watts Newsom and Isodore Newsom as described above, then you must find Edgar Patton not Guilty." Edgar Patton had conceded that he did in fact receive $800.00 for his "Redman" mobile home, but this statement reads as a prejudicial trap, that limits the jurors options and lead them to believe the $800.00 was the total crust of this case, which in fact it was not it was a contract to sale between Edgar Patton and Isodore Newsom, which was breached by Newsom and Patton later found out while in jail that the Newsom's had gotten his "Redman" mobile home anyway and let the justice system persecute him in the process. In ***United States v. Rossmondo, 144 F. 3d 197 (2nd Cir. 1998)*** found reversible error and stated: "ambiguous jury instructions misled jurors". In ***United States v. Thomas, 150 F. 3d 743 (7th Cir. 1998)*** found reversible error and stated: "Defendant was entitled to instructions that buyer/seller relationship is not itself a conspiracy." In ***United States v. Meyer, 157 F. (cert omitted) United States v. Hall, 116 F. 3d 1253 (8th Cir. 1997)*** state that "mere buyer/seller relationship did not establish conspiracy, further stated exposure of jury to unrelated, but prejudicial matters, required new trial. The Trial Court erred by not interpreting the matter to the jury that it was guided by contract law, and the parties to the

agreement should receive the benefit of their bargain. It is a fatal objection to the jurisdiction of the court when it has not cognizance of subject-matter jurisdiction of the action, and any court that did not establish subject matter jurisdiction need not have any plea requirement to oust the court of jurisdiction. It is undisputed that Patton and Newsom did in fact have a written contract it is also undisputed that the Newsom's made the first material breach of said contract and the Trial Court took one citizens side over the other, which denied Patton's right to enter into a mutual contract. See (Rec. p. 49).

CONCLUSION

For all the foregoing reasons, the Appellant respectfully contends his "Felony False Pretense Conviction must be overturned, reversed, remanded for new trial or in the alternative vacated, as a matter of law and in the interest of justice.

Respectfully submitted this the 3rd day of April, 2009.

EDGAR PATTON, APPELLANT, PRO SE
240 HUTSON/MORRIS ROAD
COLUMBIA, MS 39429

CERTIFICATE OF FILLING AND SERVICE

I hereby certify that the original Defendant-Appellant's Brief has been filed with the Clerk of the Mississippi Supreme Court.

I further hereby certify that a copy of the above and foregoing Defendant-Appellant's brief has been duly served upon :

MARION COUNTY DISTRICT ATTORNEY

500 COURTHOUSE SQUARE, SUITE 3

COLUMBIA, MS 39429

HONORABLE R.I. PRICHARD III

CIRCUIT COURT JUDGE

P.O. BOX 0488

PURVIS, MS 39475-0488

MRS BETTY SEPHTON

SUPREME COURT CLERK

450 HIGH STREET, 3rd FLOOR

JACKSON, MS 39201

Via first class mail postage prepaid.

This the 3rd day of April, 2009.

EDGAR PATTON, DEFENDANT/APPELLANT, PRO SE