

**CERTIFICATE OF INTERESTED PERSON**

**JAVORAS MOTEN**

**v.**

**STATE OF MISSISSIPPI**

**NO. 2008-TS-00970-COA**

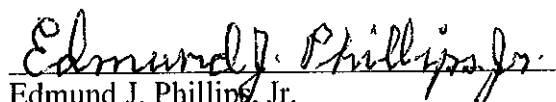
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

**Honorable Mark Duncan  
District Attorney  
P.O. Box 603  
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**Honorable Marcus D. Gordon  
Circuit Court Judge  
P.O. Box 220  
Decatur, MS 39327**

**Honorable Jim Hood  
Attorney General of MS  
P.O. Box 220  
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**Javoras Moten  
APPELLANT**

  
Edmund J. Phillips, Jr.  
Attorney of Record for Javoras Moten

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## **TABLE OF AUTHORITIES**

### **Cases**

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## **STATEMENT OF THE ISSUES**

1. The indictment was fatally defective; the Court erred in failing to grant Appellant's motion for directed verdict, request for peremptory instruction and motion for a new trial.

## **STATEMENT OF THE CASE**

Javoras Moten Field appeals his conviction from the Circuit Court of Leake County, Mississippi of the crime of causing bodily injury to LaDonna Jenkins, an employee of Walnut Grove Youth Correctional Facility, a private correctional facility, by striking the said LaDonna Jenkins with his fist, at a time when the said LaDonna Jenkins was acting within the scope of her employment with the Walnut Grove Youth Correctional Facility, contrary to and in violation of Section 47-4-1, Mississippi Code Annotated (1972), (simple assault on a private corrections officer) and sentence of confinement for four and one-half (4 ½) years in the custody of the Mississippi Department of Corrections.

Appellant was twenty years old at the time of the occurrences described.

At trial, Raymond Jenkins testified for the State that he was a supervisor of officers and inmates at Walnut Grove Correctional Facility, that LaDonna Jenkins was a correctional officer under his supervision, that Appellant had been an inmate there (T-42); that he (Jenkins) was called to a place where some sort of altercation had occurred on November 1, 2007, that Appellant was then in his cell and Ms. Jenkins was walking away (T-43), that Appellant may have been complaining that his eye hurt, that Cortez Williams may have been a floor walker (trustee) assisting Ms. Jenkins (T-48).

LaDonna Jenkins testified for the State that on that date she was collecting supper trays, assisted by Cortez Williams, that she unlocked Appellant's cell to get his tray, that Appellant requested to leave his "zone" (cell), that Appellant stood in the door to prevent her closing his cell door, that she believed Appellant had placed something in the lock to prevent its locking (she didn't see him do it), that when she attempted to remove the item from the lock, Appellant hit her with his fist in her chest, that they got into an altercation (T-54) and she stepped on some carrots on the floor and fell, that Appellant went into his cell, that she called for assistance on her hand held radio, that her only injury was a bruise on her knee suffered when she slipped on the carrots and fell (T-58), that she was not injured from Appellant hitting her (T-55, 58, 59), that inmates commonly place items in the locks to prevent their locking, that when they do so she cannot unlock their cells without a key (T-61).

The State rested. The Court postponed hearing Appellant's requested motion for a directed verdict until later, and Appellant testified that on the day in question there had been an altercation with another inmate, that the area was in "lockdown" (T-65); "they locked everybody down", that he had put nothing in his cell door lock, that he requested she call a supervisor to permit him to move to another zone, that she pushed him in his face with her radio antennae hitting his eye, that he jumped up and she slipped on some carrots on the floor, fell, and called "code blue" (T-66). Officers came.

He was treated in "medical" and placed in solitary confinement (T-68) for twenty days.

Cortez Williams testified that he had been on November 1, 2007 and was still an inmate at the prison, that on that day he was assisting Ms. Jenkins when she started (T-74) screaming “lock down” before they passed out trays, that he asked Appellant what had happened and Appellant told him that Ms. Jenkins had hit him in his eye with her walkie talkie, and Williams went to his cell. He testified that he didn’t see either Appellant or Ms. Jenkins hit the other. When he turned to look Appellant was in his cell and Appellant’s cellmate was between Appellant and Ms. Jenkins, that Ms. Jenkins locked the cell door, that he saw nothing in the lock to prevent its locking. On cross, he testified that Ms. Jenkins had said she slipped on some carrots (T-76), but that he didn’t see what happened between Ms. Jenkins and Appellant, before she fell.

Appellant rested, and made his belated motion for a directed verdict which was denied.

### **SUMMARY OF THE ARGUMENT**

To support a conviction, an indictment must include all essential elements of the offense charged and the proof must conform to the indictment in all material particulars.

## **ARGUMENT**

### **I.**

#### **THE INDICTMENT WAS FATALLY DEFECTIVE; THE COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR DIRECTED VERDICT, REQUEST FOR PEREMPTORY INSTRUCTION AND MOTION FOR A NEW TRIAL**

The indictment against Appellant read as follows:

Javoras Moten late of the County aforesaid, on or about the 1<sup>st</sup> day of November in the year of our Lord, 2007, in the County and State aforesaid, and within the jurisdiction of this Court, did willfully, unlawfully, feloniously, purposely and knowingly cause bodily injury to LaDonna Jenkins, an employee of Walnut Grove Youth Correctional Facility, a private correctional facility, by striking the said LaDonna Jenkins with his fist, at a time when the said LaDonna Jenkins was acting within the scope of her employment with the Walnut Grove Youth Correctional Facility, contrary to and in violation of Section 47-4-1, Miss. Code Ann. (1972),

The indictment thus did not charge Appellant expressly with simple assault but described an act which constitutes simple assault. The act charged was causing bodily injury to LaDonna Jenkins, an employee of a private correctional facility, by Appellant striking her with a fist.

LaDonna Jenkins was the only witness who testified that Appellant struck or assaulted her. She testified that she did not develop any bruises from being hit on the chest (by Appellant's fist) and was not injured by Appellant striking her in the chest (T-59):

- Q. So whatever he was doing, you and he physically getting into that, that didn't cause you any injury to your upper chest. Right?
- A. No, it didn't.

It was undisputed that Appellant striking her with his fist did not cause any injury.

She testified that, later in the altercation, her foot slipped on some carrots on the floor, she fell and her knee developed a bruise as a result. That bruise was her only injury. Because Appellant's allegedly striking LaDonna Jenkins with his fist caused no injury, the proof failed to conform to the accusation in a material allegation and failed to prove that allegation of the indictment beyond a reasonable doubt. The proof in the case before the Court was thus deficient and the Court's failure to grant the motion for a directed verdict, the request for peremptory instruction and the motion for a new trial was each reversible error, even if there was evidence that Appellant caused injury to Ms. Jenkins by reason of some other action he took. The State is limited to proof of the allegations of the indictment. *Rushing v. State*, 753 So.2d 1136 (Miss. App. (1999); *Copeland v. State*, 423 So.2d 1333, 1336 (Miss. 1982). In *Copeland* the State did not prove, in a drug case, that the drug charged was the drug actually involved.

Further, every essential element of an offense must be alleged in order for an indictment to be sufficient. The right of an accused to be informed of the nature and cause of the accusation against him is essential to the preparation of his defense. *Peterson v. State*, 671 So.2d 647 (Miss. 1996).

In the case before the Court, Appellant's trial counsel reasonably could have prepared a defense that Appellant's hitting Ms. Jenkins with his fist caused no injury. Thus he did not have notice necessary to prepare his defense properly. If there was anything Appellant did in their altercation that led directly or indirectly to her falling and bruising her knee or otherwise injuring herself, it was not his hitting her with his fist (something he denied he did). Thus the proof did not conform to the indictment.



**CONCLUSION**

The verdict should be overturned.

RESPECTFULLY SUBMITTED,



EDMUND J. PHILLIPS, JR.  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, Mississippi 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, Mississippi 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, Mississippi 39205, Attorney General for the State of Mississippi.

DATED: December 29<sup>th</sup>, 2008.



EDMUND J. PHILLIPS, JR.  
Attorney for Appellant