

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CLARK DAVID BRUMFIELD**

**APPELLANT**

**VS.**

**NO. 2009-CA-0579**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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## **TABLE OF CONTENTS**

<b>TABLE OF AUTHORITIES .....</b>	<b>ii</b>
<b>STATEMENT OF THE FACTS .....</b>	<b>1</b>
<b>SUMMARY OF THE ARGUMENT .....</b>	<b>2</b>
<b>ARGUMENT .....</b>	<b>3</b>
<b>CONCLUSION .....</b>	<b>5</b>
<b>CERTIFICATE OF SERVICE .....</b>	<b>6</b>

## TABLE OF AUTHORITIES

### FEDERAL CASES

<i>Jones v. United States</i> , 463 U.S. 354, 368, 103 S.Ct. 3043, 3051-52, 77 L.Ed2d 694 (1983) .....	4
<i>U.S. v. Jackson</i> , 19 F.3d 1003, 1007 n.3 (5th Cir. 1994) .....	4

### STATE STATUTES

Mississippi Code Annotated §99-13-7 .....	3
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**STATEMENT OF THE FACTS**

The Appellant, Clark David Brumfield, was indicted for first degree arson. (Record p. 5). On February 5, 2004, he was tried and the jury returned a verdict of not guilty by reason of insanity and “further finding [Brumfield] having not been restored to his reason and still a danger to the community.” (Record p. 6). Circuit Judge Mike Smith ordered that Brumfield “be committed to the Mississippi State Hospital at Whitfield, Mississippi where he shall be securely housed and confined until further order of this court.” (Record p. 6). Additionally, Judge Smith ordered that Brumfield receive “any psychiatric and medical treatment necessary while at the Mississippi State Hospital.” (Record p. 6).

On November 5, 2007, counsel for the Mississippi State Hospital filed a Petition for Conditional Release. (Transcript p. 7 - 8). District Attorney, Dee Bates’s office filed an Objection to Petition for Conditional Release on February 20, 2008 arguing that Brumfield should remain at

Mississippi State Hospital as:

the Defendant burned his girlfriend's house with her in it (she was not injured) because, other things, "spirits" within her were having sex with her. The only way to prevent this, in his mind, was to burn the couple's bed (and consequently, the home). His actions were routinely governed by "voices" and because of this, he represents a danger to this community.

(Record p. 9).

A hearing regarding the Petition was held on February 11, 2009 before Circuit Judge David Strong, Jr. During the hearing, Dr. Sondra F. Holly testified that Brumfield was admitted to the Forensic Unit of Mississippi State Hospital in February of 2004. (Transcript p. 5). He was treated and brought before the Discharge Advisory Board in January of 2007 wherein it was determined that he could be processed at a lower level of care. (Transcript p. 5). At this point, Dr. Holly began treating Brumfield. (Transcript p. 5). Dr. Holly diagnosed Brumfield as having "an Axis I, that's a major diagnosis of psychosis not otherwise specified." (Transcript p. 6). She explained that the diagnosis means that "he may have had a thought disorder at the time of his commitment . . . [and that] he did have a history, intermittent history, of drug abuse." (Transcript p. 6). After treating him for approximately one year, Dr. Holly attempted to discharge him by presenting him to the Discharge Advisory Board. (Transcript p. 5). The Board agreed that he could be discharged with certain recommendations. (Transcript p. 7). After the hearing, Judge Strong, ordered that Brumfield "be retained for additional treatment at the Mississippi State Hospital at Whitfield, Mississippi." (Record p. 11). Brumfield appeals this decision.

### **SUMMARY OF THE ARGUMENT**

There is no Mississippi statutory law or case law setting forth the procedure for releasing or retaining persons ordered to the Mississippi State Hospital after being found not guilty by reason of insanity. However, the United States Supreme Court makes it clear that the Due Process Clause

requires that the committed acquittee be released when he has recovered his sanity or is no longer dangerous. The State of Mississippi concedes that the evidence presented at the hearing and contained in the record before this Court regarding Brumfield's Petition for Conditional Release did not clearly and convincingly establish that Brumfield was still a danger to himself or to the community. For these reasons, the State of Mississippi respectfully requests that this Court remand this case back to the Circuit Court and provide instructions and guidance regarding the proper procedure to be followed.

### **ARGUMENT**

Brumfield raises two issues on appeal. He first questions "whether the lower court erred in ordering that [he] should continue to be held for treatment at Mississippi State Hospital in the absence of a finding that he is a danger to himself or others." (Appellant's Brief p. 1). He also questions "whether [he], an insanity acquittee in the lower court, may be held indefinitely at Mississippi State Hospital for treatment, when his treating psychiatrist testified that he is not a danger to himself or others." (Appellant's Brief p. 1).

Brumfield was found, by a jury, to be not guilty of the crime of arson by reason of insanity. That same jury also found that Brumfield had not been restored to his reason and that he was still a danger to the community. Thus, the trial court ordered that he be sent to the Mississippi State Hospital for treatment pursuant to Mississippi Code Annotated §99-13-7 which states as follows:

When any person is indicted for an offense and acquitted on the ground of insanity, the jury rendering the verdict shall state in the verdict that ground and whether the accused has since been restored to his sanity and whether he is dangerous to the community. If the jury certifies that the person is still insane and dangerous, the judge shall order him to be conveyed to and confined in one (1) of the state psychiatric hospitals or institutions.

As noted by Brumfield in his brief, this statute does not provide guidance regarding the release of

such persons if they are later found to be restored to their sanity. The State of Mississippi nor Brumfield could find any Mississippi case law providing guidance on the issue either. However, a Mississippi Attorney General's Opinion states that "the circuit court committing a person to a mental institution pursuant [to the above cited statute] retains jurisdiction to authorize release of such person." 1993 WL 425321 (Miss. A.G.). Thus, presumably this matter was properly before the Circuit Court.

Mississippi case law is also silent regarding the standard of review for such cases. However, the Fifth Circuit, in a case involving the corresponding federal statute, held that "the 'clear and convincing evidence' standard is invoked when the underlying offense of a person found not guilty by reason of insanity is 'an offense involving bodily injury to, or serious damage to the property, of another person, or involving a substantial risk of such injury or damage.'" *U.S. v. Jackson*, 19 F.3d 1003, 1007 n.3 (5<sup>th</sup> Cir. 1994). Brumfield was charged with first degree arson which certainly causes serious damage to the property of another. Thus, the issue before this Court is whether the trial court's finding that Brumfield required further treatment and confinement at Mississippi State Hospital is supported by clear and convincing evidence.

In this regard, the United States Supreme Court has held the following:

The Due Process Clause requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed. (*citations omitted*). The purpose of commitment following an insanity acquittal, like that of civil commitment, is to treat the individual's mental illness and protect him and society from his potential dangerousness. The committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous. (*citations omitted*).

*Jones v. United States*, 463 U.S. 354, 368, 103 S.Ct. 3043, 3051-52, 77 L.Ed2d 694 (1983). The *Jones* Court further held that as an acquittee has not been convicted, "he may not be punished" and "[h]is confinement rests on his continuing illness and dangerousness." *Id.* at 369. After considering

the evidence presented at hearing, including evidence that Brumfield's treating psychiatrist believed he was not a danger to himself or the community (Transcript p.9), that Brumfield has been released temporarily to visit family on numerous occasions without incident (Transcript p. 8), and that Brumfield has successfully followed a building program and a behavioral program (Transcript p. 5), the State of Mississippi concedes that the evidence presented at the hearing did not clearly and convincingly establish that Brumfield was still a danger to himself or to the community.

As the record in this case did not clearly and convincingly establish that Brumfield remains a threat to himself and/or to the community and as there is no Mississippi statutory law or case law setting forth the procedure for releasing or retaining persons ordered to Mississippi State Hospitals under these circumstances, the State of Mississippi respectfully requests that this Honorable Court remand this case back to the Circuit Court with instructions and guidance regarding how to proceed.

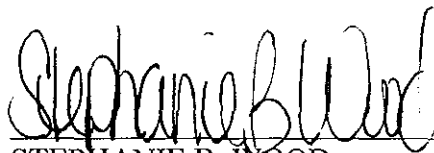
### CONCLUSION

The State of Mississippi respectfully requests that this Court remand this case back to the Circuit Court and provide instructions and guidance regarding the proper procedure to be followed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

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## CERTIFICATE OF SERVICE

I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

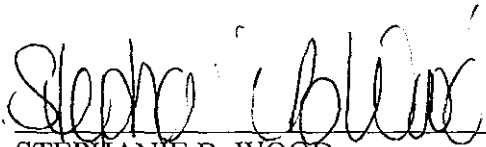
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This the 20th day of August, 2009.

  
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