

THE SUPREME COURT OF MISSISSIPPI

ALBERT ABRAHAM, JR.

APPELLANT

VS.

NO. 2009-CP-01759

STATE OF MISSISSIPPI

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF DESOTO COUNTY

BRIEF FOR APPELLANT

Oral Argument Requested

DATED: December 21, 2009

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APPEARING *PRO SE*

CAUSE NO. 2009-CP-01759

ALBERT ABRAHAM, JR.

VS.

STATE OF MISSISSIPPI

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 the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Albert Abraham - Plaintiff and Appellant

State of Mississippi - Defendant and Appellee



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Statement Of The Issue

Whether Appellant, within the meaning of *Miss. Code Ann. §11-51-93*, demonstrated “good cause” sufficient such that the DeSoto County Circuit Court should have granted Appellant’s Petition for *Writ of Certiorari* on his cause of action being appealed by *writ of certiorari* from the DeSoto County Justice Court to the DeSoto County Circuit Court?

Standard Of Review

The standard of review is whether the Circuit Court abused its discretion in denying Appellant’s petition for *Writ of Certiorari*. *Lott v. City of Bay Springs*, 960 So2d 525, 526 (Miss. App. 2007).

Statement Of The Case

On January 26, 2009, the Justice Court of Desoto County found Albert Abraham, Jr., guilty *in absentia* on traffic ticket number 9-0794680 for allegedly driving 91 miles per hour in a 70 mile per hour zone; and, on traffic ticket number 9-0794681 for allegedly following too closely. (RE 1)

Abraham appealed his conviction to the Circuit Court of DeSoto County by *Writ of Certiorari*. The Justice Court however failed to send a record up to the Circuit Court and the Circuit Court failed to request one from the Justice Court. (RE 14-15)

By Order entered on September 17, 2009, the Circuit Court of DeSoto County denied Appellant's Petition for *Writ of Certiorari* finding that Appellant had not shown "good cause" for the issuance of the *Writ*. (RE 14-15)

Summary Of The Argument

The Circuit Court denied the petition for writ of certiorari on two related grounds. The court concluded that Petitioner had not shown "good cause" within the meaning of *Miss. Code Ann. §11-51-93* because: (A) there was no record before the Circuit Court from the Justice Court; and, (B) Abraham's affidavit was based only on "information" and "belief" as to "broad statements made by the County Prosecutor, Craig Treadway, as to his memory about *in absentia* traffic ticket trials in general."

The Circuit Court's reasons amount to an abuse of discretion: (A) Because it was the duty of the Justice Court to send the record up and failing in that, it was the duty of the Circuit Court to order the Justice Court to send the record up; and, (B) The statements attributed to the County Attorney in Appellant's Affidavit were uncontradicted and admissible under M.R. Evid. 406 to establish that it was customary for the Justice Court to try traffic tickets *in absentia* without putting on any proof of guilt. Abraham could not be more specific about what happened. By definition a person tried *in absentia* has no first hand knowledge about what went

on at his trial.

Argument

Albert Lee Abraham, Jr., filed his petition for *writ of certiorari* urging the Circuit Court of DeSoto County to grant him a trial *de novo* before it on his tickets on the ground that he was tried *in absentia* in justice court and no proof in the way of testimony had been put before the Justice court as to his guilt. (RE 1-3)

The Circuit Court's reliance on *Merritt v. State*, 497 So2d 811, 813-814 (Miss. 1986), if relied upon for the proposition that Petitioner has failed to make his case by failing to put the Justice Court record before the Circuit court, is misplaced for several reasons. In *Merritt* Petitioner asked the Circuit Court to reweigh the evidence before the Justice Court, a task clearly not within the parameters of the *Writ of Certiorari*. As the *Merritt* Court noted:

“Finally, the charge the verdict was against the weight of the evidence is one we certainly could not evaluate without having a record before us. Moreover, we doubt that this presents the sort of pure question of law reviewable on certiorari via the procedure authorized in Miss. Code Ann. §11-51-93 (1972).” *Merritt v. State*, *supra.*, 497 So2d at 815.

Failure of Petitioner to put the Justice Court record before the Circuit Court was no reason to deny Petitioner's Petition for *Writ of Certiorari* for two reasons. First, unlike *Merritt* Abraham is not alleging that the Justice Court decision was

against the weight of the evidence. Abraham is alleging there was *no evidence of his guilt* placed before the Justice Court except the ticket which is clearly, as a matter of law, insufficient.

Under *Miss. Code Ann. §99-17-9* a traffic ticket may, if proper notice has been given to the defendant, be tried *in absentia*. Nevertheless, even in the defendant's absence, the prosecution must prove its case *beyond a reasonable doubt*. "[T]he burden of proving the defendant guilty beyond a reasonable doubt requires more than a mere introduction of the affidavit or ticket. In other words there must be testimony in addition to the ticket." *Op. Atty Gen. No. 93-1012, 1994 WL 32573, Shirley, Jan. 12, 1994*. Numerous other AG Opinions have expressed the same conclusion. *Op. Atty. Gen. No. ___, 1990 WL 548213, Miller, Dec. 7, 1990; Op. Atty. Gen. No. 98-0226, 1998 WL 224305, Mitchell, April 24, 1998; Op. Atty. Gen. No. 2001-0778, 2002 WL 399737, Arnold, Jan. 11, 2002; and, Op. Atty. Gen. No. 2005-0219, 2005 WL 1692987, Johnson, June 10, 2005*.

Second, it is the duty of the clerk of the Justice Court, not the Petitioner, to send the Justice Court record up to the Circuit Court for review. As the Supreme Court noted in another *certiorari* case:

"[I]t was the duty of a justice of the peace from whose court the case had been appealed to transmit to the clerk of the circuit court a certified copy of the record of the

proceedings, with all of the original papers and proceedings in the case and the original appeal bond given by the appellant; and, that upon failure to discharge this legal duty it was competent for the circuit court to issue the necessary process to enforce its performance.” *Fassman v. Town of Centreville*, 184 Miss. 520, 186 So. 641, 642 (1939) (and the cases cited therein)

It is true that Abraham based his affidavit only on “information” and “belief” as to “broad statements made by the County Prosecutor as to his memory about *in absentia* traffic ticket trials in general.” This however furnishes no basis to deny Abraham’s Petition for *Writ of Cert* for at least three reasons.

First, since Abraham was tried *in absentia*, he could **never** have first hand knowledge of what proof was or was not put on when he was tried.

Second, under M. R. Evid. 406 evidence of habit or the routine practice of an organization “whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the...organization on a particular occasion was in conformity with the...routine practice.” Clearly therefore the evidence from the County Prosecutor as to the fact that “for the past several years he had no recollection of ever having put on any proof if the person ticketed did not show up for trial,” is relevant to show that no proof was put on in Abraham’s case. Most particularly so, since Craig Treadway, the person

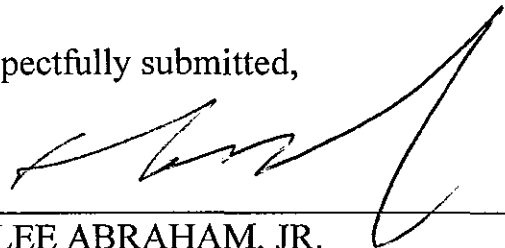
furnishing this information, would have been the prosecutor in Abraham's case.

Finally, even though this proof may have been general, it was also *uncontradicted*. A copy of the Petition was served on the Prosecutor, Craig Treadway. He made no effort to contradict the proof put on by Abraham. Clearly his silence must be interpreted as a conclusion that Abraham is correct in saying that he was tried *in absentia* on the basis of the ticket alone, with no supporting testimonial evidence.

Relief Requested

Appellant asks that this Court reverse and render finding that the Circuit Court should have granted Petitioner's Petition and ordering the Circuit Court to give Abraham a trial *de novo* on the merits as to his tickets.

Respectfully submitted,



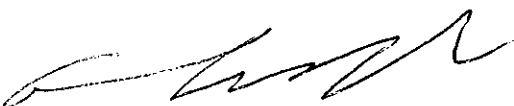
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CERTIFICATE OF SERVICE

I, A. Lee Abraham, Jr., do hereby certify that I have this day caused to be mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief For Appellant to Craig Treadway, Esq., Post Office Box 681, Olive Branch, Mississippi 38654.

DATED, this the 21st day of December, 2009.



A. LEE ABRAHAM, JR., MSB NO [REDACTED]