IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NOLAN WILLIAMS JR **APPELLANT**

V. **NO. 2009-KA-0092-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. Nolan Williams, Jr., Appellant
3. Honorable Dewitt (Dee) T. Bates, Jr., District Attorney
4. Honorable David Strong, Circuit Court Judge

This the 5 day of May, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

Benjamin A. Suber
COUNSEL FOR APPELLANT

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STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Pike County, Mississippi, and a judgment of conviction of unlawful possession of at least one tenth (0.1) but less than two (2) grams of cocaine with intent to distribute, enhanced pursuant to Section 41-29-147 of the Mississippi Code of 1972. Nolan Williams was sentenced to thirty-five (35) years in the custody of the Department of Corrections, with twelve (12) years suspended, leaving twenty-three (23) years to serve, five (5) post release supervision under the supervision of the Mississippi Department of Corrections, and a fine of five thousand dollars ($5000.00) plus court costs, following a jury trial on November 18, 2008, Honorable David H. Strong Jr.,

presiding. Williams is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On Friday, August 24, 2007, Nolan Williams was riding with Eddie Isaac and they were pulled over by Lyle Tadlock. Tr. 68. According to the testimony of Williams, during the stop one of the officers saw an open beer and said "open beer, arrest him." Tr. 97. One of the officers pulled Williams out of the car. *Id.* The officer asked if Williams had any guns, drugs, or anything like that of the sort in the vehicle. *Id.* Williams was taken to the back of the car. Tr. 98. The officer patted down Williams and searched his side of the car and said "you're clean." *Id.* He then went to the other side and opened the door and pulled Isaac out of the car. *Id.*

Once Williams was at the police station, one of the officers said he was going to search Williams again. *Id.* Williams removed his clothes and was then asked to shake out his clothes and some cocaine was found on the floor. Tr. 99. Williams admitted that the drugs was for personal use and that he did not have any intentions of selling that cocaine. *Id.*

Williams was also found with $800 in his pocket, but Williams explained to the jury that the money was a loan from his parents. *Id.* Williams stated that his parents loaned him the money to get his car fixed and to get in his house. *Id.*

Williams adamantly denies that the drugs were found in his waistband. Tr. 100. Williams testified that the drugs were in his underwear. *Id.* Williams also denies selling some cocaine to an undercover agent four (4) days prior. Tr. 104.

According to the testimony of Deska Varnado, he was conducting an investigation regarding drugs in August 2007. Tr. 76. Four (4) days prior to the incident previously discussed, Varnado claims that he bought crack cocaine from Williams at a hotel. *Id.* He claims to have audio and video of the transaction, but he did not know his name nor did his confidential source. Tr. 76-77.

Varnado then decided to put surveillance on the guy for several days. Tr. 77. On that Friday, August 24, 2007, Varnado saw Eddie Isaac turn into the Economy Inn and Williams got in the vehicle. Tr. 77-78. Once Isaac and Williams left the hotel, Varnado called for an uniformed patrol. Tr. 78. Officer Lyle Tadlock responded. *Id.*

Tadlock was contacted by Varnado, reference to a vehicle he had under surveillance and wanted to try to identify the occupants that were in the vehicle. Tr. 68. Tadlock claimed that when he found the vehicle, the driver of the vehicle was not wearing his seat belt. *Id.* At that point in time, Tadlock initiated a traffic stop. *Id.* Williams and Isaac were identified as being in the vehicle. *Id.* Isaac was driving the vehicle and Williams was a passenger. *Id.*

Once the vehicle was stopped, Varnado came to the vehicle and started talking to the driver. Tr. 68-69. Varnado noticed an open beer can. Tr. 69. Varnado had Williams and Isaac to step out of the vehicle and moved them to the back of their vehicle. *Id.* Tadlock

initiated a pat-down of Williams. *Id.* During the course of his search, Tadlock got down to the waist area of Williams and felt an object that was not consistent with clothing or anything similar. *Id.*

Tadlock contends that he could not tell what the nature of the object was. *Id.* At that time Tadlock pulled the item from between the pants that Williams had on and his underwear. *Id.* The item looked like a small plastic bag with what appeared to be crack cocaine, and he placed it on the hood of the car. *Id.* Williams was subsequently arrested and taken to jail.

After Williams was read his rights, Varnado interviewed Williams. Tr. 80. Williams told Varnado that he was going to smoke the crack cocaine, not sell any crack cocaine. *Id.*

SUMMARY OF THE ARGUMENT

The verdict in this case was against the overwhelming weight of the evidence. The crack cocaine was a relatively small amount, and Williams had plans to only smoke the crack cocaine instead of selling any of the crack cocaine. The evidence presented failed to establish beyond a reasonable doubt the charge of unlawful possession of at least one tenth (0.1) but less than two (2) grams of cocaine with intent to distribute. Allowing the verdict to stand on this evidence would manifest an injustice.

ARGUMENT

ISSUE
THE TRIAL COURT ERRED IN DENYING WILLIAMS' MOTION FOR A NEW TRIAL BECAUSE THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

In trial counsel's Motion for Judgment Notwithstanding the verdict or in the alternative a New Trial, trial counsel specifically argued that the jury's verdict was against the overwhelming weight of the evidence. C.P. 42, R.E. 16. The trial judge denied this motion. C.P. 45, R.E. 17. The trial judge erred in refusing to grant this motion.

In ***Bush v. State***, the Mississippi Supreme Court set forth the standard of review as follows:

> When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. ***Herring v. State***, 691 So.2d 948, 957 (Miss.1997). We have stated that on a motion for new trial, the court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. ***Amiker v. Drugs For Less, Inc.***, 796 So.2d 942, 947 (Miss.2000). However, the evidence should be weighed in the light most favorable to the verdict. ***Herring***, 691 So.2d at 957. A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, "unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict." ***McQueen v. State***, 423 So.2d 800, 803 (Miss.1982). Rather, as the "thirteenth juror," the court simply disagrees with the jury's resolution of the conflicting testimony. *Id.* This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. *Id.* Instead, the proper remedy is to grant a new trial.

Bush v. State, 895 So.2d 836, 844 (Miss. 2005) (footnotes omitted).

In the present case, Williams is at a minimum entitled to a new trial as the verdict was against the overwhelming weight of the evidence. During the trial, two officers with the McComb Police Department testified. During this testimony Varnado claimed that he had previously purchased drugs from Williams. Tr. 76. Varnado then began surveillance on the place where he allegedly bought drugs. Tr. 77. The testimony of Varnado is the only evidence that Williams was ever selling crack cocaine. Further, after Varnado bought the crack cocaine, he still did not know the name of the person he bought the crack cocaine from that day. Whether Williams sold crack cocaine four (4) days prior is irrelevant to this case. Moreover, no other proof was presented.

Williams admits to possessing the crack cocaine, but adamantly denies ever wanting or trying to sell the crack cocaine. Varnado admitted that he never saw Tadlock remove any cocaine from the person of Williams. Tr. 84. He also stated that he did not drug test Williams. *Id.* Tadlock stated that no fingerprints were taken from the plastic bag that was alleged to have been found on the person of Williams. Tr. 72.

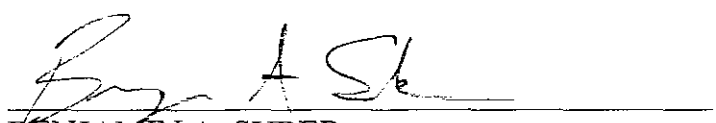
According to the testimony of Tadlock, the amount of crack cocaine found was a very small amount of cocaine. Tr. 74. Williams admitted that the amount of crack cocaine that he had on him was worth only twenty ($20) dollars. The crack cocaine was a relatively small amount, and Williams had plans to only smoke the crack cocaine instead of selling any of the crack cocaine.

The verdict was against the overwhelming weight of the evidence. Williams therefore respectfully asserts that the foregoing facts demonstrate that the verdict was against the overwhelming weight of the evidence, and the Court should reverse and remand for a new trial.

CONCLUSION

Given the facts presented in the trial below, the verdict was contrary to the overwhelming weight of the evidence. Nolan Williams Jr. is entitled to have his conviction reversed and remanded for a new trial.

Respectfully submitted,
MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Nolan Williams Jr., Appellant

BY: 

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CERTIFICATE OF SERVICE

I, Benjamin A. Suber, Counsel for Nolan Williams, 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 5 day of May, 2009.

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