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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DONOVAN ERIC JOHNSON — APPELLANT

V. — NO. 2009-KA-0711-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF THE APPELLANT

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V. **NO. 2009-KA-0711-COA**

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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. Donovan Eric Johnson, Appellant
3. Honorable Doug Evans, District Attorney
4. Honorable Joseph H. Loper, Jr., Circuit Court Judge

This the 24th day of August, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

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STATEMENT OF THE ISSUES

I. **THE TRIAL COURT ERRED IN DENYING JOHNSON'S MOTION FOR A NEW TRIAL, AS THE VERDICT ON BOTH COUNTS WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

II. **THE TRIAL COURT ERRED IN GRANTING INSTRUCTION S-1.**

III. **THE TRIAL COURT ERRED IN ADMITTING EXHIBITS S-3 THROUGH S-8.**

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Attala County, Mississippi, and a judgment of conviction on two counts for the sale of cocaine against Donovan Johnson following a jury trial

on March 19, 2009, Honorable Joseph H. Loper, Jr., Circuit Judge, presiding.[1] (C.P. 62-63, R.E. 5-7). Johnson was sentenced to twenty five (25) years on each count, to run concurrently; he was ordered to pay court costs and two $5,000 fines, with $5,000 suspended; and his driving privileges were suspended for six (6) months. (C.P. 62-63, R.E. 6-7). The trial court denied Johnson's motion for a new trial and/or motion for judgment notwithstanding the verdict. (C.P. 68, R.E. 8-11). Johnson is currently incarcerated under the supervision of the Mississippi Department of Corrections.

FACTS

Prior to the incident at issue, Laci Gove (Gove) and the defendant, Donovan Johnson (Johnson), were friends. (Tr. 100, 119-20). Gove confided in Johnson– "He helped me and talked to me when I had nobody"–and she regularly visited Johnson at his house. (Tr. 100, 119-20). In December, 2007, Gove was arrested for and charged with the sale of prescription drugs. (Tr. 67, 92, 93, 95). She agreed with police to act as a confidential informant to help her out on the drug charge. (Tr. 93).

On January 23, 2008, Gove went to the Kosciusko Police Department, where she met with Officer's Louis Gowan (Officer Gowan) and Robert Land (Officer Land) for the purpose of attempting a drug buy aimed at the defendant, Johnson. (Tr. 51-2, 74, 81). The officers provided Gove $40 in marked money, which the officers intended to recover from Johnson after the attempted buy. (Tr. 52-53, 75, 82). Officer Land then left the police department for the Monfort Jones

[1] Johnson was indicted on three counts of the sale of cocaine; Count I charged that he sold cocaine on January 18, 2008, while Counts II and III charged that he sold cocaine on January 23, 2008. (C.P. 1). Count I was not brought to trial; instead, Counts II and III were tried together, and the trial court dismissed Count I on the State's motion made after the jury reached guilty verdicts on Counts II, and III. (C.P. 60, 61, Tr. 168).

Memorial Hospital parking lot, situated across the street from Johnson's house about 100-150 yards away. (Tr. 54, 75).

Officer Gowan then conducted an extremely cursory pre-buy search of Gove's person by merely patting her down and searching her pockets. (Tr. 53, 64, 82). He failed to check the area between Gove's legs and also failed to check inside her pants and inside her bra. (Tr. 64-5). Officer Gowan further failed run a drug dog around Gove, even though the dog would likely have discovered drugs that the token pat-down failed to approach. (Tr. 64-5). At trial, Officer Gowan himself even acknowledged that his search was not complete/thorough. (Tr. 65).

Officer Gowan also searched Gove's vehicle . . . sort of; he searched "under the seats, [in] the glove box, that's about all." (Tr. 53). Again, no drug dog was used to detect drugs in Gove's car that escaped Officer Gowan's peek under the seats and in the glove box. (Tr. 64, 78-9). He placed a hidden camera in Gove's makeup bag. (Tr. 54-5). Although Gove's bag contained "various makeup items," Officer Gowan admitted that he searched only one item: a makeup "compact." (Tr. 65-6). He failed to check the rest of the items in Gove's purse, such as Gove's lipstick tubes, which Officer Gove acknowledged have a space that drugs could be hidden. (Tr. 65-6).

After "searching" Gove and equipping her with money and the video recorder, Officer Gowan started the camera and tailed Gove as she drove to Johnson's house; Officer Gowan parked his vehicle next to Officer Land's as Gove pulled into Johnson's driveway. (Tr. 54-5, 75-6, 82).

Upon her arrival, Gove, got out of the vehicle and went into Johnson's house. (Tr. 55, 76). A few minutes later, the officers saw Gove and Johnson walk outside to Gove's car and talk for a minute before Gove drove away. (Tr. 57, 76). Officer Gowan then followed Gove back to the police station, where Gove handed him a small bag of cocaine. (Tr. 57, 91). Officer Land remained in the hospital parking lot momentarily until Officer Gowan called him to go back to the police department.

(Tr. 77). The video recorded during the first buy; however, no sound was recorded; the picture was fuzzy; and the video showed no exchange. (Ex. S-9).

At the station, Gove agreed to attempt a second buy. (Tr. 83). However, before the second buy, Gove went to the veterinarian to pick up her pit bull. (Tr. 91). She later returned to the Kosciusko Police Department, where she met Officer Gowan. (Tr. 91).

Officer Gowan "researched [sic] her, patted her down, just a simple pat down. Basically, the same exact scenario." (Tr. 58). The officers and Gove then set out for a second attempted buy; again, the Officers parked in the hospital parking lot, and Gove pulled into Johnson's driveway. (Tr. 59, 60, 77). Gove stayed in her car, and Johnson came outside. (Tr. 60, 77). The two talked for a minute at Gove's car, and Gove left as Johnson walked back inside his house. (Tr. 60, 77, 92). Officer Gowan then followed Ms. Gove back to the police department, and Officer Land stayed in the parking lot until he was called back to the police department, where Gove produced a second bag of cocaine. (Tr. 60-1, 77-8, 92). On the second buy, the video equipment malfunctioned and recorded nothing. (Tr. 59, 91)

Officer Gowan later turned the marked the bagged substances over to the Mississippi Crime Laboratory to be tested. (Tr. 57, 61). Chris Wise, a forensic scientist of the Mississippi Crime Laboratory, testified that he tested the substance(s) in the two bags and concluded that each contained 0.4 grams of cocaine. (Tr. 102-07).

At trial, Johnson, explained that he was very sick on the day in question, and he was preparing to do a breathing treatment with his nebulizer for his asthma at the time Gove first arrived at his home. (Tr. 114). He testified that Gove came in; they sat and talked for a few minutes; and Gove left. (Tr. 114-5). Gove told Johnson that she was pregnant and that her dog was getting spayed at the vet; however, Johnson testified that drugs were neither mentioned nor exchanged for

money. (Tr. 116). After Gove left, Johnson administered the breathing treatment that he had been preparing. (Tr. 119).

Johnson testified that, when Gove came to his house the second time, he went outside to look at her dog. (Tr. 114, 115). After Gove left, Johnson returned to his house, and soon thereafter admitted himself to the hospital with walking pneumonia; he was discharged the following evening at 6:15p.m. (Tr. 114, 115). Johnson testified that he did not sell Gove cocaine either time she came to his house. (Tr. 115-116). When shown pictures of him interacting with Gove (Ex. S-7, S-8), Johnson explained that he was preparing to put some albuterol with saline in his nebulizer for his breathing treatment, and the dark-colored object in the bag appearing in the pictures was a green-colored cap that he was preparing to place on top of his nebulizer after loading it with albuterol. (Tr. 117-18). He also explained that he simply went outside to look at Gove's dog when she returned to his house the second time, as she mentioned it to him the first time. (Tr. 120).

Gove testified that Johnson sold her cocaine on both visits. (Tr. 83, 92). However, Gove also admitted that, prior to trial, she told defense counsel, Rosalind Jordan, that she never bought drugs from Johnson, and she was going to testify to the contrary. (Tr. 98). Johnson's cousin, Chauncy Dotson, also testified that he spoke with Gove about two-and-a-half weeks prior to trial, and she also told him that Johnson did not sell her drugs. (Tr. 127). Gove also testified that the police told her that acting as a confidential informant would help her out on her drug charge, and she was going "to look out for herself over somebody else." (Tr. 96-97).

SUMMARY OF THE ARGUMENT

The verdict in this case was against the overwhelming weight of the evidence. Johnson was convicted and sentenced to twenty-five years in prison based on the word of a drug dealing witness

who stood to gain leniency in or dismissal of a criminal charge against her in exchange for her testimony, and who twice told others that she did not buy drugs from Johnson. Additionally, Gove, her purse, and her vehicle were hardly searched at all, leaving numerous places on her person and within her effects that she could have easily and successfully hidden the drugs that she produced to the police after the alleged buys. This is further supported by the fact that, after Gove agreed to do a second buy, she was allowed to run an errand, thereby giving her an opportunity to purchase a second bag of cocaine before the second "buy." Moreover, the fuzzy video and photographs showed no exchange and demonstrated nothing except a man holding a bag with dark-colored contents that are not readily identifiable. Furthermore, the video did not pick up sound. Finally, Johnson testified and offered a plausible explanation.

In light of all this, the overwhelming weight of the evidence easily created a reasonable doubt as to whether Johnson sold Gove cocaine. Were this Court to allow this verdict to stand, it would sanction an unconscionable injustice. Therefore, the trial court erred in denying Johnson's motion for new trial, and Johnson is entitled to a new trial.

The trial court also erred in granting instruction S-1, which referred to the two counts against Johnson as "Count II" and "Count III." This instruction violated the motion in limine that the trial court previously granted to protect Johnson from references to prior bad acts evidence, in that, the jurors, upon seeing the instructions referring to the counts as "Count II" and "Count III," were informed (by necessary inference) that Johnson had committed an additional criminal act: Count I. The instruction, which did used identical language in reference to both counts, did not differentiate the two counts as to time. Therefore, the instruction was very confusing to the jury, and it is impossible to know which evidence the jury associated with or relied on in reaching its verdict on each count. This also lends support to Johnson's argument that the verdict was against the

overwhelming weight of the evidence. Instruction S-1 was prejudicial and confusing, and the trial court erred in granting the instruction as written. Accordingly, Johnson is entitled to a new trial.

Finally, the trial court erred in admitting Exhibits S-3 through S-8, which consisted of pictures of the alleged first buy. The pictures displayed a times of 10:14a.m. and 10:15a.m; whereas, the testimony of the officers indicated that this buy occurred at about 2:00p.m., and Gove testified that the buy occurred at about 9:00a.m. This evidence was insufficient to establish that the photographs were what the State purported them to be, and the pictures were, thus, unauthenticated and inadmissable under Mississippi Rule of evidence 901(a). Consequently, the trial court erred in admitting them, and Johnson is entitled to a new trial.

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING JOHNSON'S MOTION FOR A NEW TRIAL, AS THE VERDICT ON BOTH COUNTS WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.

In his motion for a new trial, Johnson argued that the verdict was against the overwhelming weight of the evidence. The trial court denied this motion. In so doing, the trial court erred because Gove's testimony was the only evidence that an actual drugs-for-money exchange took place, and her testimony was substantially impeached by two prior inconsistent statements that Johnson did not sell her drugs on the day in question. Officer Gowan's inadequate search of Gove's person, makeup bag and vehicle, permitted opportunities (and a reasonable doubt) for Gove to carry the drugs to the buy. The grainy video without sound and the fuzzy pictures (Ex. S-3 through S-8, S-9) merely show Johnson holding something in a bag. Furthermore, Johnson explained that he was holding medicine necessary to administer his breathing treatment with a nebulizer.

The trial court's decision to deny a motion for a new trial is reviewed under the abuse of discretion standard. *Simpson v. State*, 993 So. 2d 400, 410 (¶35) (Miss. Ct. App. 2008) (citation

omitted). In reviewing a challenge to the weight of the evidence, the evidence is viewed in the light most favorable to the verdict, which will only be disturbed "when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005) (citing *Herring v. State*, 691 So. 2d 948, 957 (Miss. 1997)).

Despite the stringent standard of review, "this Court has not hesitated to invoke its authority to order a new trial and allow a second jury to pass on the evidence where it considers the first jury's determination of guilt to be based on extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Dilworth v. State*, 909 So. 2d 731, 737 (¶22) (Miss. 2005) (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984). This Court "sits as a hypothetical thirteenth juror." *Lamar v. State*, 983 So. 2d 364, 367 (¶5) (Miss. Ct. App. 2008) (citing *Bush*, 895 So. 2d at 844 (¶18)). "If, in this position, the Court disagrees with the verdict of the jury, 'the proper remedy is to grant a new trial.'" *Id.*

The video and still shots were inconclusive. The video had no sound, and the grainy pictures merely showed Johnson holding a bag with contents that were not readily identifiable; Johnson explained that the item in the bag was a green cap that he was about to place on his nebulizer. At no point during the video is an exchange of any kind shown. (See. Ex. 3-9). The only evidence that an actual sale of cocaine occurred was the unreliable testimony of an interested witness, Gove. As explained below, the record demonstrates that Gove was unreliable and biased.

Gove became a confidential informant against Johnson, in order to receive preferential treatment on her own drug sale charges. *Id.* To this end, Officer Land testified that her charges might be dismissed because of her cooperation against Johnson. (Tr. 79-80). Thus, the case against

Johnson rested on the testimony of an admitted drug motivated to gain the possible dismissal of the charges against her in return for her testimony against Johnson. Gove admitted as much at trial: "I am going to look out for myself over somebody else." (Tr. 97).

Not only was Gove's testimony unreliable because of her vested interest, she also told two people prior to trial that Johnson did not sell her any drugs on the day in question. (Tr. 98, 127). Gove even told trial counsel that Johnson did not sell her any drugs, but she was going to testify to the contrary. (Tr. 98). Two weeks before trial, Gove also told the same thing to Chauncy Dotson. (Tr. 127). This directly contradicted Gove's trial testimony that she did buy drugs from Johnson. (Tr. 83, 98). What is clear from Gove's testimony, is that she lied and was going to do what was best for her. (Tr. 97). To allow Johnson's conviction to stand on Gove's testimony would sanction an unconscionable injustice.

Furthermore, the police investigation and sting operation were riddled with problems that raise a reasonable doubt as to Johnson's guilt. Gove could have easily planted or produced the cocaine that supposedly belonged to Johnson that day because Officer Gowan admittedly failed to conduct a complete/thorough search of her person, her makeup bag, and her vehicle. Officer Gowan testified that he did not search Gove's bra, inside her pants, or pat down between her legs. (Tr. 65). He readily admitted that he was unable to perform a completely thorough search of Gove by not checking those areas. *Id.* The police also failed to use a drug dog to sniff her person and belongings for narcotics. (Tr. 64). Furthermore, Officer Gowan did not conduct a thorough search of Gove's makeup bag, failing to check the inside of the lipstick tubes and similar places. (Tr. 65-66). There were several places where Gove could have hidden the drugs used to charge and convict Johnson. The police wanted a drug buy and Gove had all the reason in the world to produce one. Also

significant, is the fact that the police recovered no money from Johnson, although, they had marked the money given to Gove, which she allegedly used in the purchase(s) with Johnson.

Beyond all this, Johnson offered a plausible explanation for the events that transpired that day. Johnson testified that when Gove showed up at his house–which was nothing out of the ordinary–he was about to administer a breathing treatment with his nebulizer. (Tr. 114). Johnson was feeling ill, and, in fact, admitted himself to the hospital with walking pneumonia later that day. (Tr. 114-115). Johnson testified that the bag he was holding in the video/pictures contained a cap that is placed atop his nebulizer after he loads it with albuterol. (Tr. 117).

On the first visit, Gove came in, and they talked a few minutes about her pregnancy and her dog having surgery. *Id.* Gove returned later that day with the dog, and Johnson walked to her car so he could see the dog. (Tr. 114-115). They spoke for a minute or two, and Gove left. This testimony is consistent with the events Gove testified to (aside from an alleged drug sale) and what the officers viewed the second time Gove went to Johnson's house. Therefore, Johnson offered a plausible explanation for Gove's visits to his house on the day in question, and a reasonable doubt existed as to whether Johnson sold drugs to Gove..

In sum, the video and still shots were insufficient to show that Johnson possessed, much less sold, cocaine on the day in question. Gove's testimony was unreliable and incredible due to her interest in favorable treatment and her prior inconsistent statements. The State's proof on the second "buy" failed to even include the grainy video without sound that accompanied the first buy. Also, the State's superficial search of Gove, left numerous opportunities for her to carry cocaine on her person, in her bag, or in her vehicle. She even had an opportunity to get cocaine in between the two "buys" when she was allowed to leave the police station go pick up her dog. Thus, there is

reasonable doubt as to whether the drugs Gove produced came from Johnson. Finally, Johnson's testimony provided a plausible explanation that was consistent with Gove's version of events, save the alleged drug buy(s).

For the reasons set forth above, the verdicts on both counts were against the overwhelming weight of the evidence which created a reasonable doubt as to whether Johnson sold Gove cocaine on the day in question. Therefore, this Court would sanction an unconscionable injustice were it to affirm Johnson's convictions. Accordingly, Johnson is entitled to a new trial.

II. THE TRIAL COURT ERRED IN GRANTING INSTRUCTION S-1.

Prior to trial, Johnson filed, and the trial court granted, a motion in limine to exclude evidence of prior bad acts that would create a prejudicial inference in the minds of the jurors. (C.P. 29-30, Tr. 37-8). At trial, the State offered Jury instruction S-1, which referred to the Counts against Johnson as "Count II" and "Count III." (C.P. 41, Tr. 132). Defense counsel objected and argued that the instruction informed the jurors of an additional criminal charge (Count I). (Tr. 132).

The standard of review for challenges to jury instructions has been stated as follows:

> Jury instructions are to be read together and taken as a whole with no one instruction taken out of context. A defendant is entitled to have jury instructions given which present his theory of the case, however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence.

Humphrey v. State, 759 So. 2d 368, 380 (¶33) (Miss. 2000). "If the instructions fairly announce the law of the case and create no injustice, no reversible error will be found." *Howard v. State*, 2 So. 3d 669, 672 (¶12) (Miss. Ct. App. 2008) (quoting *Hawthorne v. State*, 835 So. 2d 14, 20 (¶26) (Miss. 2003)). As explained below, the granting of instruction S-1 created an injustice in the instant case by creating an prejudicial inference and confusing the jury. The prejudice and confusion caused by

the instruction also supports the argument that the verdict was against the overwhelming weight of the evidence, as argued in the previous issue.

In granting instruction S-1 as written, the trial court essentially violated the very motion in limine that it previously granted to protect Johnson from the very type of prejudicial inference that instruction S-1 undoubtedly created in the minds of the jurors. The jurors, upon seeing the instructions referring to the counts as "Count II" and "Count III," were informed (by necessary inference) that Johnson had committed an additional criminal act: Count I.

This instruction was also very confusing in light of the evidence presented at trial. For instance, both Officer Land and Officer Gowan testified that the first "buy" occurred around 2:00p.m. (Tr. 63, 78). However, both Gove and Johnson testified that the first "buy" occurred about 9:00 a.m. or 10:00 a.m. (Tr. 81, 94, 114). From this, it appears that a buy was attempted one morning between 9:00 and 10:00. However, the police testified that the first buy occurred around 2:00 p.m. Thus, confusion arises as to whether Gove and Johnson were referring at times to another buy altogether, possibly Count I.

Moreover, instruction S-1 did not differentiate "Count II" and "Count III" by time; the instruction (and the indictment) used identical language with respect to both counts. (See C.P. 1, 41). Thus, it is impossible to know which evidence the jury identified with or relied on in reaching its verdict on each count.

Instruction S-1 was prejudicial, in that, it informed the jury of additional prior bad acts of Johnson and raised an impermissible inference of guilt. The instruction also prejudiced Johnson's case because it was very confusing in light of the evidence presented to the jury. Accordingly, the trial court erred in granting S-1 as written, and Johnson is entitled to a new trial.

III. THE TRIAL COURT ERRED IN ADMITTING EXHIBITS S-3 THROUGH S-8.

At trial, Officers Gowan and Land testified that the first buy occurred about 2:00p.m. or later on the day in question. (Tr. 63, 78). Gove and Johnson testified that the first "buy" occurred about 9:00 a.m. or 10:00 a.m., respectively. (Tr. 81, 94, 114). The State, through Gove, attempted to introduce photographs of the drug buy which displayed a time of 10:14a.m. and 10:15 a.m. (Ex. S-3 through S-8, Tr. 84-85). Defense counsel objected and argued that the pictures were not an accurate depiction of what they purported to be, as the officers claimed the buy occurred around 2:00p.m. and Gove testified that it occurred about 9:00a.m. (Tr. 85).

"This Court reviews a trial court's decision regarding the admissibility of evidence under an abuse of discretion standard of review." *Young v. State*, 987 So. 2d 1074, 1076 (¶8) (Miss. Ct. App. 2008) (citing *Edwards v. State*, 856 So. 2d 587, 592 (¶12) (Miss. Ct. App. 2003)). Also, reversal is not required "unless the error adversely affects a substantial right of a party." *Mingo v. State*, 944 So. 2d 18, 28 (¶27) (Miss. 2006). "The discretion of the trial judge must be exercised within the boundaries of the Mississippi Rules of Evidence." *Ivy v. State*, 641 So. 2d 15, 18 (Miss. 1994) (citing M.R.E. 103(a), 104(a)).

Under Mississippi Rule of Evidence 901(a), "the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." M.R.E. 901(a). In the instant case, there is insufficient evidence to authenticate the photographs offered and admitted as State's Exhibits 1-8. The State, through the testimony of Officers Gowan and Land, were alleging that the first buy occurred about 2:00p.m., and the second but occurred over an hour later. Gove recalled that the first buy occurred about 9:00a.m. The photographs display a times of 10:14a.m. and 10:15a.m.,

which support neither the officers' nor Gove's testimony.

Johnson was indicted on Count I, and that count was not tried with the two counts subject to this appeal. At trial, Johnson testified that Gove came to his house around 9:30a.m. or 10:00 a.m. The record does not reflect what time the events alleged under Count I occurred; but it appears from the conflicting testimony at trial that a drug bust was attempted one morning, and there is a strong possibility that the morning drug bust was the drug bust subject to Count I, which was not at issue at trial. At a minimum, there was clearly a level of confusion amongst the witnesses surrounding which attempted drug bust was at issue during their examination(s).

In light of this confusing testimony regarding the time of the drug bust at issue, there was insufficient evidence that the pictures were what the State purported them to be–pictures of the first buy that occurred at about 2:00 p.m on the day in question. Under Rule 901(a), the pictures were not properly authenticated and, the trial court erred in admitting them. Accordingly, Johnson is entitled to a new trial.

CONCLUSION

Based on the propositions briefed and the authorities cited above, together with any plain error noticed by the Court which has not been specifically raised, Johnson respectfully requests that this honorable Court reverse his conviction, sentence and fines on both counts entered in the trial court and remand this case for a new trial.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY: _____

Hunter N Aikens
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I, Hunter N Aikens, Counsel for Donovan Eric Johnson, 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 24th day of August, 2009.

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