

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**KEITH BOYDA**

**APPELLANT**

**V.**

**NO. 2009-KA-1891-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF OF THE APPELLANT**

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**MISSISSIPPI OFFICE OF INDIGENT APPEALS  
W. Daniel Hinchcliff, MS Bar No. [REDACTED]  
301 North Lamar Street, Suite 210  
Jackson, Mississippi 39201  
Telephone: 601-576-4200**

**Counsel for Keith Boyda**

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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. Keith Boyda, Appellant
3. Honorable Cono Caranna, District Attorney
4. Honorable Lawrence Paul BBourgeois, Jr., Circuit Court Judge

This the 12th day of April, 2010.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

  
W. DANIEL HINCHCLIFF  
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
301 North Lamar Street, Suite 210  
Jackson, Mississippi 39205  
Telephone: 601-576-4200

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**ISSUES**

**STATEMENT OF THE ISSUES**

**ISSUE NO 1 : WHETHER THE VERDICT OF THE JURY WAS CONTRARY TO THE WEIGHT OF THE EVIDENCE.**

**ISSUE NO. 2 : WHETHER EVIDENTIARY RULINGS BY THE TRIAL COURT PREVENTED APPELLANT BOYDA FROM FULLY DEVELOPING HIS THEORY OF THE DEFENSE.**

**STATEMENT OF THE CASE**

This appeal proceeds from the Circuit Court of Stone County, Mississippi, and a judgement of conviction against Keith Boyda for the crime of murder and a resultant sentence of life following a jury trial commence on September 8, 2009, Honorable Lawrence Paul Bourgeois, Jr., Circuit judge presiding. Keith Boyda is presently incarcerated in an institution under the supervision of the Mississippi Department of Corrections.

**FACTS**

“What should we do about Mommy?” Keith Boyda asked his teenage daughter, shortly after shooting “Mommy” to death in the presence of the child. (T. 123) The daughter, Theresa Boyda, [“Theresa”], was the opening witness for the State. Presently 19 years of age, she was 15 years old

when her father, Keith Boyda, ["Keith"], shot his wife, Linda Gail Boyda, ["Linda"], four times with a 9 millimeter pistol. (T. 112-113) Linda testified that her father had been upset that day, and that she had advised her mother that he was "not going to calm down." (T.117) Her father took a pistol outside and shot it, then came back in and used it to shoot his wife. (T. 117-118). After shooting her mother, Keith Boyda then walked casually up to his daughter and suggested they go visiting, saying: "Let's go, we're going to Mr. Dooley's." (T. 119) From Dooley's, they went to visit "J.C." (T. 121-122) Apparently unappreciative of the nature of his act, Keith Boyda uses the phone at J.C.'s house, where he told someone, in the presence of J.C.'s mother, that he had just killed his wife. (T. 122) Keith Boyda then suggested that his daughter go with him to visit her grandmother. (T. 123)

Theresa told the jury that her father had become weird sometime prior to the shooting. He would sit in his rocking chair and query his daughter if she thought "there's things like aliens in the world." Keith Boyda, she said, would just sit in his rocker and stare off into the sky. He was no longer able to work. Theresa denied she thought it was weird that Keith Boyda talked to turtles. (T. 132-133) Sometimes he would go into the yard and pull up any red flowers. (T. 135). Not surprisingly, she said that conversations with her father often did not make sense. (T. 136) His thoughts did not seem to be related to one another.

Theresa recalled that her father had been hospitalized due to his odd behavior and was prescribed anti-depressants. (T. 139) She was aware that at one time her father's guns had been taken from him, again due to his behavior. But they were eventually returned. (T. 143) As opposed to this bizarre behavior, she agreed her father had once been an organized person who ran his own business. (T. 144). When they went to Dooley's house, right after her mother had been shot, Keith Boyda called to Dooley to get his guns. Dooley had thought that made no sense. (T. 148)

The surreal quality of the visit to J.C's house was revealed during the State's questioning of Melissa Scott. (T. 164) Mrs. Scott, recalled that Theresa came to her house that night, followed shortly thereafter by Keith Boyda. She had never met Boyda before, but, after borrowing her phone, where he discussed killing his wife, he then took Mrs. Scott by the arm and told her he needed to talk. (T. 166-167) Though she had just heard him telling someone "she's dead, she's dead", Boyda asked her to be his friend. She acknowledged being a little concerned. (T. 167) Mrs. Scott feigned an appointment to get Boyda out of her house. As he left, he handed his belt and some pocket knives to Theresa. Boyda then told Mrs. Scott she could call the police. (T. 168). Boyda's demeanor was calm, not indicative of a man that had just shot his wife. Mrs. Scott thought it was strange that Boyda told her to call the police. (T. 170) Upon these proofs the State rested. (T. 171)

The defense motion for a directed verdict, argued that the State at best had proved a flimsy manslaughter.

Boyda's defense, beginning with the opening statement, was directed to Boyda's lack of mental capacity to commit the crime. His counsel flatly told the jury, that he had "a client who was insane at the time of the crime." ( T. 174) He told the jury of Boyda's descent into insanity, how he had once been rational. That he had operated a business and been lucid, until things began to unravel.

Boyda's loss of soundness of mind was first chronicled by his brother Karl Boyda. (T. 177) Karl related that his brother Keith had once been a normal, "very organized" businessman. However, after an audit from the State tax commission, his behavior began to change. He became reclusive, and his reaction to the audit was "overboard." (T.179) He abandoned his own business, so his brother gave him a job in his mortgage business. But Boyda just sat and stared into space, rocking himself back and forth. (T. 179) His communication with others became fantastic, as his thoughts became ever more rambling and circular. "[Y]ou just never knew what direction he was going in." (T. 180)



So Boyda would sit and stare off into space. His ability to interact with others deteriorated. . On occasion he would call “ranting and raving.” (T. 182) Karl recalled one occasion where his brother appeared to realize his mental health was deteriorating. One night while cleaning floors at the Mississippi Regional Center, a mental health facility, Keith Boyda, in a moment of lucidity, observed that “[t]his is the type of place you want me committed to.” (T. 182) However, Boyda was otherwise losing his “interest in doing anything.” (T. 182) Meanwhile he continued to “rant.” (T.183) Karl was naturally concerned and wanted his brother to see a doctor. He convinced Keith to see his doctor for a “physical.” As a result, Keith Boyda was prescribed medication. While the meds appeared to help, Keith Boyda stopped taking them . He would hid the pills under his tongue and then spit them out. He thought someone was trying to poison him. Boyda told his brother the government was after him.

Meanwhile his condition worsened. Karl visited him once and found him wandering around apparently out of it. (T. 187). He was becoming delusional, believing that he (Keith Boyda) was the inventor of heating and air-conditioning. Though he had moved into an older ranch house in Wiggins, he began to believe he had built his house himself. Karl reported that his brother thought he had invented the technique of grafting, such as tree branches. Boyda was no longer speaking in sentences. His thoughts were not coherent, but instead he “spoke in circles.” (T. 189) His personal hygiene became totally devolved, with Keith Boyda not bathing or washing his hair for weeks. (T. 190)

The State’s attorney uncovered more symptoms of mental illness. Keith would at times act violent. (T.192) Boyda once “wound up at Forrest General.” (T. 193) The doctor’s informed Keith that his brother was mentally ill, suffering paranoia and depression. Boyda was prescribed medication.

Kyle Boyda, was also a brother and worked as a program analyst with Mississippi Gulf Coast Community College. He recalled that Keith had once operated his own heating and air-conditioning business. But, he had also observed, that some time before the shooting, Keith Boyda had begun acting strangely. (T. 198) Keith had become obsessive over his tax audit. He abandoned his business and moved to Wiggins. He began to call his brother in the middle of the night, saying little, but that he was tired. (T. 199-203) He related strange stories of going back down to the coast and swimming out to the sandbar off east Beach in Ocean Springs. Kyle said "if you're going to go swimming out in the sound, that's not the place to do it." (T. 201) Keith Boyda became obsessed with sick people, visiting people he hardly knew who were ailing. He told Kyle, "all these people that are close to me...are just dying." (T. 202) He began to obsess on death.

Keith found one call from his brother who was looking for "his Bible" troubling. He went to his brother's home and found him wandering around with his arms at his sides. Keith was looking for the Bible he had since he was a kid. Kyle had known Keith to have not been "religious." To Kyle's thinking Keith had begun acting "very bizarre." (T. 204)

Illustrations of this bizarre behavior included Keith's belief that he had broken his neck as a child and then fixed it himself. He tried to explain this to a niece who was crippled. Boyda believed she would not be crippled if she would follow his advise. (T. 205) He claimed to have suffered three different heart attacks. It was around this time that his brother's confiscated his guns. When Keith Boyda discovered his guns were missing, he "flipp[ed ]out." His brother told him the guns would not be returned until Keith Boyda received "psychiatric help." Boyda did get some help, and temporarily got better, until he quit taking the prescribed drugs. That, unfortunately led to the return of his guns.

At a cookout just before the date of the shooting, Boyda was so far gone he simply sat in a

chair by himself, his eyes glazed over. (T. 206) At this point, the defense sought testimony from Kyle of Boyda's subsequent outlandish behavior. However, the trial court sustained the objection by the State to Kyle's observations of Boyda's condition subsequent to the date of the shooting, April 26, 2005.

Two experts, one in clinical psychology and one in forensic psychiatry, both examined Boyda and were of the opinion that Boyda was unable to appreciate the nature and consequence of his actions, nor understand right from wrong. Both were seasoned and experienced professionals, but the State was permitted to bring out on cross examination, that they were not licensed in Mississippi. The State's objection to admission of the Curriculum Vitae of one of the experts was sustained, (T. 227-282) The State, in rebuttal, then put on experts from Whitfield that testified that even though Boyda had passed four examinations used to uncover malingering, that they believed Boyda was malingering. While Boyda was suffering from personality disorders he was able to appreciate his acts according to the State's experts. The diagnosis: "cannabis" and malingering.(T. 293) Important to note here, the State, in a pretrial motion obtained an order on it's motion in limine prohibiting the mention of Boyda's positive test for marihuana. One State's expert, Gilbert McVaugh did not think Boyda's belief that he had healed himself, or fixed, a broken neck that he never had, was delusional. (T. 307) Perhaps Boyda was misinformed, or perhaps it was just Boyda's narcissism. Dr McVaugh did agree that it would be paranoid to believe the FBI was seeking to kill Boyda. (T. 310) He also agreed an onset of sudden religious beliefs indicates mental disorder.

Upon these proofs the jury returned a verdict of guilty to the charge of murder.

### **SUMMARY OF THE ARGUMENT**

No reasonable juror could have concludes that Boyda was able to appreciate the nature and consequences of his act , or distinguish right from wrong. While the jury erred in not finding Boyda

not guilty by reason of insanity, the trial court erred in not granting Boyda's motion for a motion for a new trial, and more so, in it's evidentiary rulings that hid from the jury critical evidence of Boyda's mental state.

### **ARGUMENT**

#### **ISSUE NO 1 : WHETHER THE VERDICT OF THE JURY WAS CONTRARY TO THE WEIGHT OF THE EVIDENCE.**

Notwithstanding the argument below, the evidence presented herein concerning Keith Boyda's sanity was outweighed by the evidence that Keith Boyda was incapable of understanding right from wrong at the time of the crime. To understand his acute mental illness, it should really only be necessary to repeat the statement made to his daughter: "What should we do about Mommy?" No rational juror should find that anyone who could make such a statement to the child of the woman he had just shot four times in the child's presence could possibly appreciate the nature of the act they had just committed. However, that chilling statement was but a fraction of the exorbitant amount of evidence of Boyda's lack of sanity.

The trial court ruled against Boyda's motion for a new trial, and thus this issue is presented and preserved for review by this court. "When reviewing a claim that the verdict was against the overwhelming weight of the evidence, the evidence is weighed in the light most favorable to the verdict." *Bush v. State*, 895 So.2d 836, 844 (Miss.2005). This Court will not order a new trial unless it finds that the verdict 'is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.' *Id.*" *McClellan v. State*, \_\_\_\_ So.3d \_\_\_\_, 2010 WL 1077322, 3 (Miss. March 3 ,2010) Here, it is urged, a jury finding Keith Boyda possessed the requisite mental understanding to commit the crime of murder, failed in it's sworn duty. In such an instance, the reviewing Court can over-ride the jury, becoming a "thirteenth juror."

The supreme court has further instructed that, when reviewing a trial court's decision to deny a motion for a 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. However, the evidence should be weighed in the light most favorable to the verdict. 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. Rather, as the "thirteenth juror," the court simply disagrees with the jury's resolution of the conflicting testimony. This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. Instead, the proper remedy is to grant a new trial.

*Shelton v. State*, \_\_\_\_ So. 3d \_\_\_\_, 2010 WL 924092, 7 (Miss.App. March 16, 2010) No fair and rational juror could have found that a man who went visiting with his daughter after killing her mother could appreciate what he had done. Boyda talked to turtles, who probably were also unable to comprehend his circular disjointed thought patterns. He had become delusional, believing himself to have invented air-conditioning. He thoroughly neglected his personal hygiene. He believed he was able to "fix" a broken neck. Such a state of mind clearly could not appreciate the finality of death. A forensic psychiatrist and a clinical psychologist found Boyda to be insane as defined by the M'Naghten rule. However, the State's witnesses, refuting their own testing opined he was a malingering pothead with the ego to believe he invented air-conditioning. As the state's witnesses were self impeached and all the factual testimony was that of a man who had descended into the maelstrom of insanity, the jury clearly failed to properly weight the facts of the case.

As Boyda had clearly demonstrated his lack of mental capacity, the burden to prove legal sanity beyond a reasonable doubt had shifted to the State. The State could not prove legal capacity

beyond a reasonable doubt, when the two witnesses it produced had to ignore their own testing to diagnose that Boyda was malingering. Perhaps the most telling indicator, Boyda did not flee the scene, as the State argued, he went visiting, taking along his daughter who had just witnessed her mother's death. As pointed out in *Sanders v. State*, \_\_\_ So. 3d. \_\_\_, 2010 WL 78045 (March 9, 2010), where there exists a battle of the experts, evidence offered as flight by the State, but actually evidence of irrationality, can tip the scales of justice. The burden was on the State to "produce substantial evidence regarding the defendant's sanity." *Hawthorne v. State*, 883 So.2d 86, 90 (Miss. 2004) The State has failed to do so and accordingly this cause must be reversed.

However, if this Court finds that while it disagrees with the finding of the jury, the finding of the jury was not so errant as to become unconscionable, this Court should consider Boyda's second issue, that the trial court denied this jury all the relevant facts it should have had.

**ISSUE NO. 2 : WHETHER EVIDENTIARY RULINGS BY THE TRIAL COURT PREVENTED APPELLANT BOYDA FROM FULLY DEVELOPING HIS THEORY OF THE DEFENSE.**

The State used evidence of subsequent acts of Boyda as part of its proof, arguing Boyda's "flight" (T110, 381) was evidence he was rational, but the trial judge prohibited evidence of Boyda's subsequent irrational behavior by the defense. The doctors and psychiatrist examining Boyda for the State utilized tests and observations made after the fact. The State was allowed to argue that Boyda dreamed up his subsequent memory lapse, yet Boyda was forbidden from showing evidence of the manifestation of his mental illness in subsequent events.

It is ultimately the responsibility of the jury to determine whether Boyda met the criteria of the M'Naghten rule. "The issue of insanity is for the jury to determine..." *White v. State*, 542 So.2d 250, 252 (Miss. 1989) To that end "[w]itnesses are presented [both] pro and con..." *Groseclose v. State*, 440 So. 2d 297, 303 (Miss. 1983) Boyda's continued mental deterioration would certainly be

relevant evidence for the jury to consider. Especially such evidence as was proffered by his counsel:

MR DAVIS: Yes , Your Honor. Just real briefly. Of course what we wanted to do was ask this particular witness various questions that took place after his arrest

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And I'm going to go ahead and proffer what i plan to ask...Mr Kyle Boyda about his brother Keith, was that after he was arrested during a visitation, that Keith advised him he was in lockdown because someone was trying to poison him, that the water tasted funny in the jail. He checked it, it was warm. He stuck his hand in the toilet and flushed it numerous times, and it was still warm. So he felt someone was trying to poison him in the jail.

He later on heard that the FBI had made a visit and that he was sure that they were the ones that were trying to poison him. He was getting water by passing a can down to the cell beside him and having it hooked to a string and bringing it down to his cell.

Also, shortly after his arrest, he determined that the Sheriff was trying to set him up because the Sheriff wanted Mr. Boyda's property and that he felt that all public officials in Stone County and Wiggins were corrupt and they were conspiring against him.

Then just recently in February of 2009, Mr. Keith Boyda said Gordon brown, the Prime Minister, a British Prime Minister, will be coming to the United States and was going to meet with President Obama and that he had sent him a message and that Gordon Brown was going to straighten every thing back out and bring him back to England.

In August 2009, Mr. Kyle Boyda and his mother met with Keith Boyda. They asked him to cut his hair in preparation of trial and to shave. He said he could not do that because he wanted to have a hair follicle test done and show there was poison in his hair and that someone was trying to poison him.

He also mentioned that there were going to be representatives of 32 countries here at trial, and then he proceeded to name the 32 countries. (T. 211-213)

At this point Counsel is interrupted by the trial court. The trial judge iterated it's ruling premised upon a mis-application of the law and disallowed the admission of the proffered testimony. The trial

court ruled that the defense cannot put on evidence of subsequent behavior because such a lay witness cannot testify to future “prognosis.” The trial court rules based upon a mis-interpretation of *Baggett v. State*, 793 So. 2d 630 (Miss. 2001) That case addresses lay witness opinion versus lay witness reporting of observed facts. The defense did not propose to have Kyle Boyda give a lay opinion as to whether Boyda was insane or his psychiatric prognosis. Instead, he had facts the jury needed to hear so that the jury could perform it’s proper function and determine whether Boyda was unable to distinguish right from wrong. Contrary to the trial court’s understanding, *Baggett, Id.* did not proscribe lay witness testimony, it proscribed lay witness opinion to make a diagnosis of mental illness premised on subsequent actions. In *Baggett, Id.*, the trial court correctly admitted the testimony of subsequent behaviors and properly limited the testimony to observations only and to not allow the lay witness to make a diagnosis or prognosis premised on those observed behaviors.

**The court allowed her to testify as to details of the conversation but did not allow her to state the conclusion reflected in her opinion. (Emphasis added)**

Baggett notes that this Court has held that “[w]hen the insanity defense is tendered, both expert testimony and lay testimony are admissible and useful.” (Citation omitted) He argues that a lay witness should be allowed to express an opinion concerning a defendant's sanity when the witness has had a reasonably sufficient opportunity to observe the subject and has noted behavior reasonably indicative of an unsound mind and upon which he bases an opinion that the subject was, at the time of the observation by the witness, of unsound mind. Thus, Baggett contends Rapp's entire testimony should have been allowed because she had obviously known him his entire life and had sufficient opportunity to form an opinion based on the telephone conversation.

The State correctly counters that Baggett sought to have Rapp testify as to his ability to know right from wrong immediately after the crime had been committed and that such testimony should be limited to opinion based upon “observations and interpretations of those observations of a defendant prior to the incident of the specific



crime.” (Citation omitted). Thus, the trial court did not err in **limiting** Rapp's testimony. This assignment of error is without merit. (emphasis added)

*Baggett Id.*, at 635 (Miss. 2001)

It is elemental that relevant evidence is admissible. (MRE 401,402) “If the evidence has any probative value at all, the rule favors its admission.” *Pritchett v. State*, \_\_\_\_ So. 3d \_\_\_\_, 2010 WL 1208470, (Miss.App. March 30,2010) And it is fundamental to our system of justice that a defendant is entitled to a fair trial where he can present evidence in his own behalf.

A defendant has a fundamental right to have every lawful defense he asserts presented to the jury, even if that defense is highly unlikely. See *Chinn v. State*, 958 So.2d 1223, 1225 (Miss.2007) (“... every accused has a fundamental right to have [his] theory of the case presented to a jury, even if the evidence is minimal.”); *Phillipson v. State*, 943 So.2d 670, 671-72 (Miss.2006) (“We greatly value the right of a defendant to present his theory of the case ....”); *O'Bryant v. State*, 530 So.2d 129, 133 (Miss.1988)

*Abernathy v. State*, \_\_\_\_ So.3d \_\_\_\_, 2010 WL 743744, 12 (Miss. March 10, 2010) Preventing Boyda from developing his theory of the case, premised upon a mis-application of relevant law is error of fundamental proportion. “Exclusion of the defendant's evidence, however, implicates his Sixth Amendment right to compulsory process.” *Lindsey v. State*, 965 So.2d 712, 719 (Miss. App. 2007) The jury was deprived of highly relevant and critical evidence concerning Boyda’s sanity and rebuttal of the State’s theory of malingering and “cannabis.” (Presumably, Boyda was not engaging in significant use of marijuana in jail.)

However, this glaring exclusion of critical evidence was not the only errant evidentiary ruling in Boyda’s trial. The credentials and credibility of Dr. Erin Skaff was essential to Boyda’s defense. The State had been allowed to question her credentials with irrelevant questions concerning her license to practice in Mississippi. (T.230-231) Her diagnosis that Boyda could not distinguish right

from wrong, nor appreciate the consequences of his actions, was the cornerstone of Boyda's defense. Clearly, a resume is admissible. *Halladay v. Halladay*, 776 So. 2d 662 (Miss. 2000), *Giannanis v. Giannanis*, 962 So. 2d 574 (Miss. App. 2006) As noted above, the rules of evidence favor the admission of evidence having probative value. Thus, where the credibility of a witness is critical, and a defendant's liberty is at stake, the trial judge over-reached in excluding Dr. Skaff's resume.

It is well established that a reviewing court looks for abuse of discretion as the standard for determining if an evidentiary ruling was error or not; and will only reverse where the trial court made a ruling which mis-applied the law and where the defendant was thereby prejudiced.

This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Ford v. State*, 975 So.2d 859, 865 (Miss.2008) (citing *Peterson v. State*, 671 So.2d 647, 655 (Miss.1996)). We will not reverse unless the trial court applied an improper legal standard resulting in prejudice to the accused. *Id.* (citing *Peterson*, 671 So.2d at 656).

*Williams v. State*, \_\_\_\_ So. 3d \_\_\_\_, 2010 WL 1239538, 6 (Miss. April 1,2010) It is urged that such is the case here. As demonstrated above, the trial court mis-apprehended the rule enunciated in *Baggett, Id.* In doing so, Boyda was denied the opportunity to develop highly relevant evidence. Thus the jury was deprived the evidence necessary to determine the otherwise obvious, that Keith Boyda lacked the mental faculties to commit the crime of murder. For that reason, this cause should be reversed and remanded.

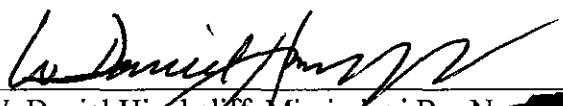
**CONCLUSION**

It is respectfully submitted that for the reasons set forth herein above, this cause should be reversed and remanded for a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

  
\_\_\_\_\_  
W. Daniel Hinchcliff, Mississippi Bar No. [REDACTED]  
Staff Attorney

**CERTIFICATE OF SERVICE**

I, W. Daniel Hinchcliff, Counsel for Keith Boyda, 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:

Honorable Lawrence Paul BBourgeois, Jr.  
Circuit Court Judge  
Post Office 1849  
Gulfport, MS 39502

Honorable Cono Caranna  
District Attorney, District 2  
Post Office Box 1180  
Gulfport, MS 39502

Honorable Jim Hood  
Attorney General  
Post Office Box 220  
Jackson, MS 39205-0220

This the 12<sup>th</sup> day of April, 2010.

  
\_\_\_\_\_  
W. DANIEL HINCHCLIFF  
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS  
301 North Lamar Street, Suite 210  
Jackson, Mississippi 39201  
Telephone: 601-576-4200