SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO.: 08-CR-011-NW-C

JOHNNY JAMES, JR. — APPELLANT

VS

STATE OF MISSISSIPPI — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF
NEWTON COUNTY, MISSISSIPPI

APPELLANT'S REPLY BRIEF

Submitted By:

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REPLY ARGUMENT

ISSUE NO. 1:

Whether or not the Trial Court committed plain error, manifest error in law and/or an abuse of discretion in violating the Sixth Amendment rights of the Defendant by violating Rule 9.06 of the Uniform Circuit and County Court Rules requiring a hearing on the record as to the competency of the Defendant as required by the Constitution of the United States of America, the Constitution of the State of Mississippi, Rule 9.06 U.C.C.C.R and *Sanders v. State*, 9 So. 3d, 1132 (Miss. 2009), *Jay v. State*, 25 So. 3d 257 (Miss. 2009), and *Patton v. State*, 2008-KP-01699-SCT (MSSC) (May 13, 2010).

The Appellee is incorrect when it states that the Appellant failed to pursue his Motion for Psychiatric Examination and that it was his burden to pursue his motion and a hearing on the examination. This is incorrect. The state wishes to claim that Appellant waived this issue for failure to raise it at the trial level. The Appellant's obligation ends when the Court rules on his Motion for Psychiatric Examination. In this case Appellant's obligation terminated when the trial court heard Appellant's motion and rendered a decision which was its order directing Appellant be examined by a competent psychiatrist or psychologist. All motions and orders are a part of the record herein. *Roy v. State*, 878 So.2d 84, 89 (¶23) (Miss. Ct. App. 2003). The Appellant only bore the burden of persuading the trial judge that there was sufficient evidence to warrant a mental examination. The trial judge obviously found evidence sufficient and

ordered the same. Therefore, Appellee's thinly veiled argument to the contrary fails on the record and their reliance upon *Goff v. State*, 14 So.3rd 625, 655 (Miss. 2009), fails in that Appellant successfully argued the need for a psychiatric examination. The Appellee wishes the court to take the position that the trial court's failure to comply with Rule 9.06 of the Uniform Circuit and County Court Rules was because the Appellant did not object to the 9.06 failure. This is simply not the case. Under Rule 9.06 of the U.C.C.C.R. "the trial Court has the affirmative duty to conduct a competency hearing on the Defendant's motion or *sua sponte* if there is sufficient doubt about a Defendant's competency". *House v. State*, 754 So.2d 1147, 1151 (Miss. 1999) (emphasis added) (citing *Drope v. Missouri*, 420 U.S. 162, 180, 95 S. Ct. 896, 908, 43 L.Ed. 2d 103 (1975); *Hearn v. State*, 3 So.3d, 722, 728 (Miss. 2008) and *Pate v. Robinson*, 383 U.S. 375,. 86 S. Ct. 836, 15 L.Ed 2d, 815 (1966). These cases have held that when the evidence raises a sufficient doubt as to Defendant's mental ability to stand trial that the Defendant is deprived of due process of law when the trial court does not **on its own conduct a separate competency hearing**. Clearly, the record in this case established the fact that the trial judge had sufficient doubt as to Appellant's mental ability to stand trial and therefore, ordered a psychiatric examination and obligated itself to comply with Rule 9.06 of the U.C.C.C.R. and conduct a hearing on the record as to the issue of competency which was not done. Rule 9.06 requires an on the record hearing to determine competency once the court has reasonable ground to believe that the Defendant is incompetent. The rule clearly uses the directive "shall" and not the permissive "may" language. The rule requires that the trial court first, shall conduct a hearing to determine if the Defendant is competent and second, shall make the finding

a matter of record. Rule 9.06 U.C.C.C.R. . In the face of this plain language, it would be error not to hold a competency hearing once a trial court orders a psychiatric examination to determine competency to stand trial. *Sanders v. State*, 9. So.3d 1136 (¶16) (Miss. 2009).

The procedural history in this case as it relates to competency flies directly in the face of the Constitutional 6th Amendment safeguards which Rule 9.06 of the U.C.C.C.R. was designed to guarantee. Therefore, in view of the **plain language** of Rule 9.06 it is obvious that the trial court's failure to comply with Rule 9.06 constitutes **plain error.** The Appellant was not obligated to pursue a hearing as to competency as required of the Court in Rule 9.06. Appellee stated this position very explicitly in their brief on page 8 when Appellee stated "a trial court itself must order a hearing".

> If before or during trial the court, of its own motion or upon motion of an attorney, has reasonable ground to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court... After the examination the court shall conduct a hearing to determine if the defendant is competent to stand trial...
>
> UCCCR 9.06. If reasonable grounds exist for the trial judge to believe that the defendant is not competent, then a hearing into the issue is required. *Howard v. State*, 697 So.2d 415, 422 (Miss. 1997) (citing *Conner v. State*, 632 So.2d 1239, 1248 (Miss. 1993) (overruled on other grounds by *Weatherspoon v. State*, 732 So.2d 158 (Miss. 1999)).

That Appellant does not have the duty to facilitate a competency hearing after an order requiring his psychological examination has been entered. The obligation to do this is one for the trial court and is non-discretionary but mandatory under the 6th Amendment and the 14th Amendment of the United States Constitution, as well as, Rule 9. 06 of the Uniform Circuit and County Court Rules. Failure to comply with Rule 9.06

denies the trial court jurisdiction to proceed to trial unless these constitutional safeguards are dealt with in a hearing on the record. Compliance with Rule 9.06 is mandatory; failure to comply with Rule 9.06 constitutes reversible error and as a result of the court's failure in the instant case this matter should be reversed and rendered.

ISSUE NO. 2:

Whether or not the Trial Court committed manifest error of law or an abuse of discretion in overruling Defendant's objection to leading and allowing the prosecution to ask multiple leading, suggestive questions of their witnesses in chief without first having declared them hostile or adverse.

The Appellee does a splendid job of explaining why leading questions should not be allowed on direct examination of a witness because leading questions, as a general rule, suggests the answer from his own witness. Rule 6.11 of the Mississippi Rules of Evidence allows that leading questions may be asked under certain circumstances, none of which exists in the record of the trial of this case. The prosecutor asked leading questions of the two prosecutions witnesses because there was such a great disparity between their testimony and prior inconsistent statements by each witness that the answers the prosecution was seeking had to be telegraphed to the witnesses by way of leading questions. No where in the record is there found any situation wherein it would be within the sound discretion of the trial court to allow these leading questions. It is obvious that the disparity of the prior inconsistent statements of the prosecution's witnesses and the answers suggested by way of the leading questions is seriously prejudicial to the Appellant.

ISSUE NO. 3:

Whether the verdict is contrary to the weight of the evidence.

The only evidence presented to the jury was the testimony of Roger Dale Huddleston and Shelly Langdon and their testimony was the result of extensive leading questions in direct opposition to prior inconsistent statements and totally uncorroborated by any other evidence. The allowances of leading questions had obviously holstered the credibility of the witnesses; that without corroboration and under instructions from the court failed to provide a jury any alternative but to render a guilty verdict.

A mere reading of the record will prove to be very exemplary of just how prejudicial leading questions can be.

CONCLUSION:

Appellant properly filed his Motion for Psychiatric Examination and pursued same before the trial court resulting in an order for a psychiatric examination. Subsequent to the entry of the order the trial court has the affirmative duty under Rule 9.06 of the Uniform Circuit and County Court Rules to deal with the competency issue by way of a hearing on the record prior to the Appellant being put to trial. This 9.06 hearing is not discretionary to the trial court having jurisdiction to put Appellant to trial. Rule 9.06 was not complied with resulting in a direct abridgement of Appellant's constitutional rights under the 6th and 14th Amendments to the United States Constitution. For these and the aforegoing reasons the conviction of Johnny James, Jr. should be vacated.

Respectfully submitted,

JOHNNY JAMES, JR., Appellant

BY: _____
JOHN R. McNEAL, JR., Appellant's Attorney

CERTIFICATE OF SERVICE

I, John R. McNeal, Jr., do hereby certify that I have this day caused to be delivered by United Postal Service, first class prepaid postage or facsimile/electronic transmission and/or by hand-delivery a true and correct copy of the above and foregoing Reply Brief of Appellant as follows:

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This the 2 day of March, 2011.

_____
JOHN R. McNEAL, JR.