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 BRIEF
(Oral Argument Not Requested)

Submitted By:

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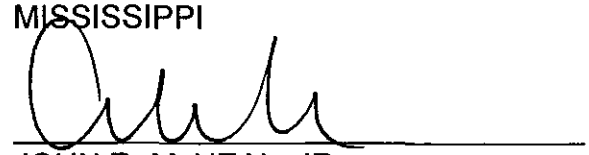
STATE OF MISSISSIPPI **APPELLEE**

CERTIFICATE OF INTERESTED PARTIES

I, the undersigned counsel of record certify that the following 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 disqualification or recusal:

JOHNNY JAMES, JR.	DEFENDANT/APPELLANT
JOHN R. McNEAL, JR., ESQ.	ATTORNEY FOR APPELLANT
CHRISTOPHER A. COLLINS, ESQ..	FORMER ATTORNEY/APPELLANT
HON. VERNON COTTEN	CIRCUIT COURT JUDGE
HON. JIM HOOD	ATTORNEY GENERAL STATE OF MISSISSIPPI



JOHN R. McNEAL, JR.

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STATEMENT OF THE ISSUES

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).**

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.**

Issue No. 3: **Whether the verdict is contrary to the weight of the evidence.**

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Newton County, Mississippi wherein Johnny James, Jr. was convicted of statutory rape in a jury trial conducted August 20, 2008, with Honorable Vernon Cotten, Circuit Judge, presiding. James is presently incarcerated with the Mississippi Department of Corrections under a sentence of 25 years to serve day for day.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Some time in the month of December 2007, Newton County Sheriff's Office received information concerning a possible statutory rape case alleged to have happened at the end of September 2007 (T. 121-122). At this time the alleged victim's parents brought the victim in and made the allegation of the statutory rape of May 25, 2007. (T. 122-126).

The State called its first witness Roger Dale Huddleston who had previously entered a guilty plea by way of plea bargain wherein Mr. Huddleston pled guilty to gratification of lust although he had been indicted along with Johnny James. (T. 59-60). Mr. Huddleston testified that he and Johnny James and the alleged victim were riding around picking up cans on the date in question for resale. (T. 61-62). Allegedly, Johnny James solicited the alleged victim for sex and the victim allegedly took off down the road. (T. 64-66). Roger Huddleston continued to testify. (T. 67-82).

The allegations were that the Appellant Johnny James had sex with the minor child while on an expedition to pick up cans and that the sexual relations where against her will. T. 82-89).

The testimony of Shelly Langdon began the next page. (T. 93-120). The basic testimony was that Johnny James, Jr. had sex with the alleged victim without her consent even though the testimony of both witnesses are wandering and diametrically opposed in some instances. The jury found Johnny James guilty. This guilty verdict is in part due to the irregularities in the procedure as well as ineffective assistance of counsel in improperly objecting to leading questions asked to the victim Shelly Langdon and his failure to on two eye witnesses who testified whose testimony would have been exculpatory in nature thereby limiting the jury's ability to discern the credibility of the two witnesses offered.

The procedural history of this case is as follows. The Defendant was indicted for statutory rape on February 7, 2008. On the same date a waiver of arraignment and entry of a plea was entered. On April 2, 2008, a motion for psychiatric examination was filed. (RE. 12-14). On April 9, 2008, an order for psychiatric examination was entered. (RE. 16-17). On June 26, 2008, an order to reschedule psychiatric examination was entered. (RE. 19-20). On July 17, 2008, another order to reschedule psychiatric examination was filed. (RE. 22-23). The balance of the Clerk's record inclusive indicates that a trial was held on August 20, 2008, with the final criminal judgment on August 22, 2008, and the filing of a motion for a new trial or other relief on August 28, 2008, along with various other procedural filings ultimately resulting in a hearing on the motion for JNOV or a new trial being denied on April 23,2010, and the notice of this appeal having been filed on May 12, 2010.

SUMMARY OF THE ARGUMENT

Johnny James was deprived his Sixth Amendment right by the Court's failure to comply with Rule 9.06 of the Uniform Circuit and County Court Rules having to do with the issue of competency. The motion was made for a psychiatric evaluation, the order granted authorizing scheduling the psychiatric evaluation as rescheduling same and ultimately paying the psychiatrist for an evaluation yet. The psychiatric issue and the competency issue was not dealt with on the record as required by Rule 9.06 of the Uniform Circuit and County Court Rules. Additionally, the trial court erred in overruling defense counsel's numerous objections to leading testimony of the state's witnesses, allowing him to lead these witnesses without having them declared adverse and eliciting testimony by way of suggesting defenses that were obviously prejudicial to the Defendant.

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).

James asserts that he should not have gone to trial without Rule 9.06 U.C.C.C.R. having been complied with and his being giving an opportunity to resolve the competency issue raised by a motion for psychiatric evaluation and an order requiring said psychiatric evaluation. Rule 9.06 U.C.C.C.R. plainly states that after the examination the Court Shall conduct a hearing to determine if the Defendant is the competent to stand trial. After

hearing all the evidence the Court shall weigh the evidence and make a determination of whether the Defendant is competent to stand trial. If the Court finds that the defendant is competent to stand trial then the Court shall make the finding a matter of record and the case will then proceed to trial. If the Court finds that the defendant is incompetent to stand trial then the Court shall commit the defendant to the Mississippi State Hospital or other appropriate mental health facility. In *Sanders v. State*, 9 So.3d 1132 (Miss. 2009), the Supreme Court held Rule 9.06 requires an on the record hearing to determine competency once the Court has reasonable grounds to believe that the defendant is incompetent. The Rule clearly uses the directive shall and not the permissive may language. The rule requires 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. U.C.C.C.R 9.06. In the face of this plain language it is evident that it would be error not to hold a competency hearing once a trial court orders a psychiatric evaluation to determine competency to stand trial.

In the case at bar, James moved for a psychiatric evaluation and the trial court granted the motion and ordered the report to be provided to the defense, the state and the trial court. James was examined by Dr. Mark Webb, a psychiatrist who is believed to have prepared a written report although the record indicates it was never filed with the Court as required in the order according to the docket of the Clerk. Thereafter, the record does not reflect that an on the record hearing regarding James' competency was ever held by the trial court. Further, the record does not contain explicit finding by the trial court that James was competent to stand trial. When the trial court found that James' motion for psychiatric examination was well taken and granted, the trial court necessarily determined that some

if not all of the assertions in James' motion were sufficient to order a psychiatric evaluation of James. In the motion, counsel for James asserted that his conduct was of such a nature that he was not capable of making a rational defense. The motion also asserted that James has exhibited behavior toward himself and others that was inconsistent with a rational individual. The motion was properly accompanied by an affidavit asserting that trial counsel believed James to be of insufficient soundness of mind to make a rational defense.

This Court's recent decision in *Hearn v. State*, 3 So.3d 722, 728 (Miss. 2008) addressed the issue of competency and Rule 9.06. In *Hearn* at 728-32 this Court found that

> The trial court failed to comply with the strictest technical sense of the Rule 9.06 which mandates that a competency hearing be conducted following a court ordered mental examination. *Id.* at 730 (citing Rule 9.06). This court, however, determined that strict compliance with Rule 9.06 was not required in order for Hearn to be heard regarding claims of mental incompetency. *Id.*

In *Hearn*, while instructive is distinguishable from our case today in that the examining psychiatrist testified at the Hearn trial. Here, there was never any testimony or hearing on the record of any nature whatsoever as contemplated by Rule 9.06.

This Court again in *Jay v. State*, 25 So.3d 257 (Miss. 2009), reiterated the mandatory effect of Rule 9.06 of the Uniform Circuit and County Court Rules when competency to stand trial is at issue. The Court further stressed that after the examination the Court shall conduct a hearing to determine if the Defendant is competent to stand trial. After hearing all the evidence the Court shall weigh the evidence and make a determination of whether the Defendant is competent to stand trial.

The United States Supreme Court has held that the criminal defendant's constitutional rights were bridged by his failure to receive an adequate hearing on his competency to stand trial when the evidence raises a bona fide doubt as to the Defendant's competence to stand trial." *State v. Robinson*, 383 U.S. 375, 385-86, 86 S.Ct 836, 15 L.Ed.2d 815 (966). Therefore, the trial court's failure to hold a competency hearing was a violation of Jay's constitutional rights and therefore requires reversal. Thus is the issue here. It was plain error and a manifest error in law for the trial judge not to comply with U.C.C.C.R. 9.06 and determine the competency of Defendant James on the record thus abridging his Sixth Amendment rights and therefore should be reversed.

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.

One must simply review the entire testimony of Roger Huddleston and Shelly Langdon this court will see that the record is replete with the trial court's refusal to sustain objections to leading questions where the witness was neither hostile, adverse nor of such a mental state that the trial court could exercise its discretion in allowing leading questions to such an extent as permeates this record. Commencing with the testimony of Roger Dale Huddleston (T 59-120), it is obvious that Rule 611(c) of the Mississippi Rules of Evidence require that leading questions should be used in the direct examination of a witness except as may be necessary to develop his testimony or when a party calls a witness as hostile or adverse, neither of which is the case here. The prosecution throughout the testimony of their two witnesses continually led and asked leading questions concerning out of court statements made by the witnesses without ever having them declared them hostile or

calling them adverse. Automatically prejudices are prejudiced the defendant in that the prosecution are being allowed to tailor the evidence to insure a conviction. In the case of *Deshpande v. Ferguson Brothers Construction Company*, 611 So. 2d 877 (Miss. 1992), this Court held that "in the exercise of that discretion, courts should take special care to see that witnesses are treated according to their actual posture in the case regardless of their affiliation. Unless there is an indication that despite the fact that the witnesses identified was an adverse party, the witness has a motivation for or has indicated that his testimony is adverse to the party with whom he is identified, that party should not be allowed to ask leading questions. In other words, the state should not be allowed to establish its case by asking leading questions of a friendly witness. It is obvious in this case that Roger Huddleston was friendly with the prosecution in that he had previously entered into a plea bargain agreement and received a very lenient sentence in exchange for his agreement to testify against the Appellant Johnny James, Jr. Therefore Roger Huddleston was a friendly witness for the prosecution and the prosecution should not have be allowed to ask leading questions.

The trial court's failure to overrule defense counsel's objection as to leading and failure to grant directed verdicts upon motions made after the continuing leading, all constitute an error in law and an abuse in discretion and for this reason the Court should reverse and remand the instant case.

Issue No. 3: Whether the verdict is contrary to the weight of the evidence.

To determine whether trial evidence is sufficient to sustain a conviction "the critical inquiry as well as the evidence shows beyond a reasonable doubt that the accused committed the act charged and that he did so under circumstances that every element of

defense existed." *Bush v. State*, 895 So. 2d 836, 843 (¶ 16) (Miss. 2005) (quoting *Carr v. State*, 208 So. 2d 886, 889 (Miss. 1968)). The deciding factor is "whether, after viewing the evidence in the light most favorable to the prosecution, any rationale trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* If the minimum conclusion is reached that, "reasonable fair minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense" the evidence is sufficient.

As stated before, and throughout the record according to the testimony in the case the facts are grossly divergent between Roger Huddleston and Shelly Langdon. There exists no physical tangible evidence and as a matter of some concern the lapse of several months almost a year before these allegations ever being made against the Appellant. Even with all of the leading questions asked of Mr. Huddleston and Ms. Langdon, they could still not tell a cohesive story as to what they claimed happened. Giving them the benefit of every doubt they could still not testify as to the events that happened in a manner that corroborated or was compatible with their prior statements or prior written statements about the alleged events.

The state is bound to prove the elements and methodology of commission of a crime charged in an indictment returned by the grand jury. *Quick v. State*, 569 So. 2d 1197, 1200 (Miss. 1990). Hence the case remained circumstantial. If you look at the testimony of Roger Huddleston, all he knows is what he was told by Shelly Langdon. He could not be specific about what he had heard or what he had seen absent the pointed leading questions by the prosecutor. Even then he could not be specific.

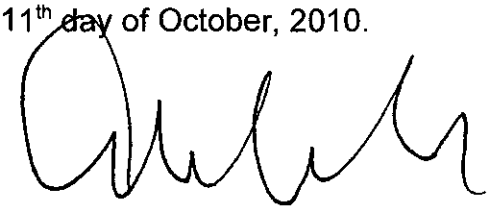
In looking at the testimony of Shelly Langdon (T. 94-120), in light of all these responses to multiple leading questions, the facts testified to and the trauma related cannot be corroborated by Roger Huddleston's testimony, the investigation by the Newton County Sheriff's Department or by any other means whatsoever. There was absolutely no tangible of the crime as described by the witnesses, merely conflicting statements as to what happened when and where.

In *Pittman v. State*, 836 So. 2d 779, 785 (Miss. App. 2002), a father was convicted in part of statutory rape of his daughter. There was no proof of penetration nor attempt of penetration. In the present case the evidence is all circumstantial and the testimony of Roger Huddleston and Shelly Langdon falls short of direct actions sufficient to result in the crime described in the indictment in this case. The trial court, as in *Pittman*, should have granted a JNOV, because the evidence was inadequate and the same result is appropriate in this case.

CONCLUSION:

The conviction of Johnny James, Jr. should be reversed with remand for a new trial.

Respectfully submitted, this the 11th day of October, 2010.

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 Brief of Appellant as follows:

Honorable Vernon R. Cotten
Newton County Circuit Court Judge
205 Main Street
Carthage, Mississippi 39051

Honorable Jim Hood
Attorney General for State of Mississippi
450 High Street
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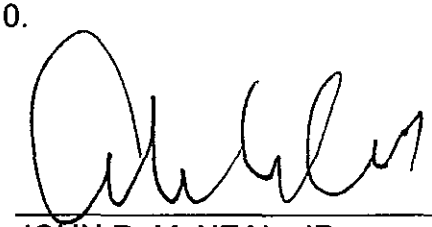
Post Office Box 101
Union, Mississippi 39365-0101

This the 11th day of October, 2010.



JOHN R. McNEAL, JR.