2010-KA-1790 RT

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REPLY ARGUMENT

The verdict of guilty in the instant case was reached after the jury was exposed to extensive inflammatory prior bad acts evidence including, but not limited to the following:

> (1) The defendant drove when he was "really, really, really, really way to drunk to even be driving" and ran off of the road;
>
> (2) The defendant whizzed past several bystanders as if he were going to hit them with his motorcycle because "he thought it would be funny;"
>
> (3) The defendant's wife was "scared to death" because "when [the defendant] gets to drinking that much, it can not end well sometimes;"
>
> (4) The defendant told teenagers that they talked "like niggers, and then proceeded to try and educate them on how to be white. . . [;]"
>
> (5) The defendant screamed at his wife calling her a "nigger lover" because she "take[s] care of niggers at the hospital" and then pushed her;
>
> (6) The defendant "picked [his wife] up all the way to the ceiling, and then he let [her] drop;" and
>
> (7) The defendant then "picked up [a] lawn chair and started beating [her] with it."

(Tr. 169-173).

The State nevertheless contends that Rogers received a fundamentally fair trial, and trial counsel's elicitation of this evidence neither amounted to deficient performance nor prejudiced Rogers's defense. (Brief of the Appellee at p. 6, 10-11).

The State claims that trial counsel's elicitation of evidence that the defendant was a violent, drunken, wife-beating racist was strategic and, thus, not ineffective. (Brief of The Appellee at p. 10). Rogers disagrees and submits that trial counsel's elicitation of the above-referenced evidence "fell below an[y] objective standard of *reasonableness*." Strickland, 466 U.S. 668, 688, 104 S. Ct. 2052,

2064 (emphasis added). What the State fails to acknowledge is that trial counsel's strategy must also be reasonable–not simply *a* strategy. Although the State apparently disagrees, Rogers submits that there is simply no reasonable trial strategy in painting your own client as a drunk-driving, wife-beating racist. Reasonable trial strategy might, perhaps, encompass evidence that Rogers and Margaret had tumultuous relationship, generally. However, allowing a conviction to be reached upon a jury's exposure to evidence of the type detailed above is a "mockery of justice," from which "it becomes apparent or should be apparent that it is the duty of the trial judge to correct [and/or prevent]." *Parham v. State*, 229 So. 2d 582, 583 (Miss. 1969)).

The State also claims that Rogers's defense was not prejudiced by the above-detailed evidence. However, as this Court recently explained, "[e]vidence which is incompetent and inflammatory in character carries with it a presumption of prejudice." *Sea v. State*, 49 So. 3d 614, 619 (Miss. 2010) (quoting *Gallion v. State*, 469 So.2d 1247, 1249-50 (Miss.1985)). While the State seemingly disagrees, Rogers submits that driving drunk, beating your wife and spewing the words "nigger" and "nigger-lover" about is patently inflammatory in character and, without question, prejudicial.

CONCLUSION

At bottom, "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984). Rogers respectfully submits that the introduction of the above detailed evidence undermined the proper functioning of our judicial system, it irreparably prejudiced Rogers's case, and the trial cannot be relied on as having produced a just result. Accordingly, Rogers

requests this Honorable Court to remand this case for a new trial.

Respectfully Submitted,

OFFICE OF THE STATE PUBLIC DEFENDER

BY: 

Hunter N Aikens, MS Bar #[redacted]
COUNSEL FOR APPELLANT

OFFICE OF THE STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
Hunter N. Aikens, Miss. Bar No. 102195
P.O. Box 3510
Jackson MS 39207-3510
601 576-4200

CERTIFICATE OF SERVICE

I, Hunter N Aikens, Counsel for Jeremy Daniel Rogers, Sr., 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 **REPLY BRIEF OF THE APPELLANT** to the following:

Honorable Robert P. Chamberlin, Jr.
Circuit Court Judge
Post Office Box 188
Hernando, MS 38632

Honorable John W. Champion
District Attorney, District 17
365 Losher Street, Suite 210
Hernando, MS 38632

Honorable Scott Stuart
Attorney General's Office
Post Office Box 220
Jackson, MS 39205-0220

This the 22nd day of November, 2011.

Hunter N Aikens
COUNSEL FOR APPELLANT

MISSISSIPPI OFFICE OF THE STATE PUBLIC DEFENDER
INDIGENT APPEALS DIVISION
Post Office Box 3510
Jackson, Mississippi 39207-3510
Telephone: 601-576-4200