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IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI
NO. 2013-KA-01927-COA

DWALIUES DEON CARTER APPELLANT

V.

STATE OF MISSISSIPPI APPELLEE

BRIEF OF APPELLANT

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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. Dwaliues Deon Carter

THIS 14th day of May 2015.

Respectfully submitted,

DWALIUES DEON CARTER

By: /s/ George T. Holmes
George T. Holmes, His Attorney

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STATEMENT OF THE ISSUES

ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE OTHER ALLEGED BAD ACT EVIDENCE VIA HEARSAY?

ISSUE NO. 2: WHETHER THE EVIDENCE OF FELONY CHILD NEGLECT UNDER COUNT FIVE WAS INSUFFICIENT OR WHETHER THE VERDICT IN COUNT FIVE WAS CONTRARY TO THE WEIGHT OF EVIDENCE?

ISSUE NO. 3: WHETHER THE TRIAL COURT ERRED IN GRANTING INSTRUCTION S-7 REGARDING CONSPIRACY?

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of the First Judicial District of Hinds County where Dwaliues Carter was convicted of two counts of capital murder, one count of house burglary, one count of conspiracy to commit house burglary and one count of felony child neglect. A jury trial was held August 12-14, 2013, with the Honorable Winston L. Kidd, Circuit Judge, presiding. Carter was sentenced to two life terms without parole, one twenty-five year term, and two five year terms all to be served consecutively and he is presently incarcerated with the Mississippi Department of Corrections. Carter was represented at trial by the Honorable Andre De Gruy and the Honorable Malcolm O. Harrison.

FACTS

On Wednesday January 26, 2011, Jackson Police traced the ownership of an abandoned pick-up truck found on Dewey Street to Robert Lewis Carter (Robert) who lived at 1323 Timber Ridge Road in Terry. [T. 128-33, 136-41, 145-46, 152, 163-64, 237-39]. Just after 1:00 p.m. that day, a Hinds County sheriff's deputy was dispatched to Robert's residence to make inquiry about the abandoned truck but instead found Robert and his girlfriend Renita Lee Mark deceased in Robert's home. *Id*. Robert and Renita had both died of multiple gunshot wounds. [T. 200- 02, 327-29; Ex. S-7]. Several 9-millimeter spent shell casings and projectiles were recovered from the residence. [T. 203-11, 223-32; Exs. S-8-16, S-24]. Spent 9-millimeter projectiles were also recovered from Robert and Renita's bodies upon autopsy. [T. 218-24; Exs. 21, 22, 23].

A live seven month old infant, Robert Lewis Carter, Jr., was also found in the house, hungry, crying and in need of a diaper change. [T. 149-53, 164, 237-39]. This infant is the child of Robert and Renita. *Id*.

Later on, sheriff's investigators were approached by a neighbor who told them that an argument or "altercation" over an automobile occurred between Robert and his brother Dwaliues Carter (Carter) and suggested that investigators speak to Carter. [T. 182, 190, 278]. So Carter was picked up later the same day and questioned. [T. 266-74, 276-86].

During his questioning, which was recorded and played for the jury, after initially requesting the presence of counsel and then abandoning that request, Carter told officers

that he was present during the homicides of Renita and Robert which occurred during the evening of Monday January 24 or just after midnight Tuesday morning January 25. [T. 266-74, 276-86; Ex. S-32]. Carter admitted to the two interrogators that he and Travaris "Bart" Christian had been taken to Robert's house by Travaris' uncle Alonzo Christian and dropped off. *Id*. Carter told the investigators there was a plan to steal from Robert, but Carter said he told Travaris he was not going to do any shooting. *Id*. Carter said that Travaris was not concerned and responded that he would do what needed to be done and was not going to leave any witnesses. *Id.* Carter said he told Travaris that his brother Robert would be at home. *Id*.

Carter was adamant that he himself "didn't pull the trigger" and that all he did was knock on Robert's door while Travaris hid beside the door out of Robert's sight. *Id*. Robert answered the door and spoke with Carter about Carter returning a Buick Skylark had he borrowed from Robert. *Id*. Carter said he then moved back and Travaris stepped up and shot Robert then went in the house and shot Renita. *Id.* Carter said he followed Travaris inside. *Id.*

During the recorded statement, Carter discussed his disappointment with Robert making Carter and their mother leave Robert's house where they had been staying, because, Robert said that they were getting "up in his business" and were always asking for money. *Id*.

Carter said Robert had turned his back on him. *Id*. When the interrogative officers

asked Carter about the baby in the house, he first did not verbally respond, he just shook his head. *Id*. When asked if he heard the baby crying, Carter said "yes." *Id.*

Carter admitted that he and Travaris took Robert's pick-up truck, a TV and an air compressor. *Id*. There was discussion between Carter and the investigators about the truck and about who was seen with the vehicle at a pawn shop after the killings. Carter denied it was him. *Id*.

Renita's twin sister, Renata Mark from McComb, testified for the state. [T. 248]. Renata told the jury that Robert was Renita's fiancé. [T. 248-49]. Renata said Robert worked offshore or overseas and whenever Robert would leave town to work, Renita would go and stay in McComb and then would return when Robert came home. [T. 254].

According the Renata, Carter and his mother were living with Robert up until November of 2010 when Robert told them they would have to leave and be gone by the time he returned from a business trip. [T. 261-65]. According to Renata, that did not sit well with Carter and the mother, and afterwards "they all tried to jump on Renita that night." *Id*.

Renata testified that Renita was not comfortable in Robert's house alone because Robert's mother "jumped on her one time for no reason" and that Carter, "flared some more stuff" when "they" were told to leave. [T. 255, 261]. According to Renata's testimony, Robert told both Carter and their mother that they could not stay at Robert's any longer. Over objection, Renata was allowed to testify what Renita told her about

Carter allegedly trying to "run Robert over or whatever." [T. 258, 275].

Even though Robert put them out, Carter was still allowed to stay at Robert's occasionally when Robert was in town. *Id*. Robert also, according to Renata, gave Carter money to help him find a job. *Id*.

The week before the incident, Renata was staying with Robert and Renita for a few days and Carter was staying there also. [T. 251-52]. According to Renata, there was some kind of disagreement when Robert told Carter he was going to have to leave because Robert was going to be out of town working. [T. 254].

The state also offered the testimony of Rhonda Faye Shannon the live-in girlfriend of Alonzo Christian, Travaris' uncle referenced above. [T. 167-69]. According to Rhonda, about three or four days prior to the homicides, Carter told Rhonda that his brother "had put him out and he had nowhere to stay" and Carter asked Rhonda if he could spend the night and Rhonda told him no, but Alonzo told him yes and Carter stayed with them until the incident when Carter was arrested. *Id.*

At one a. m. Tuesday January 25, Rhonda said Carter came to their house with a large flat-screen TV that Carter said Robert had given him, it was raining and the TV was wet. [T. 169-70, 176-78; Ex. S-5]. Rhonda said Carter and Alonzo brought the TV into the house and put it in the living room. *Id*. She did not see the vehicle which brought Carter and the TV to her home. [T. 176-77]. Rhonda later surrendered the TV to investigators. [T. 183, 191-92]. Renata identified the TV from a photograph as one

Renita had given Robert and which had been in their home. [T. 259-60; Ex. 5].

During police questioning, Rhonda learned they were looking for a weapon. [T. 171-72, 180, 185, 194]. When cleaning her house the next day, Rhonda found a pistol in a box in a cabinet; she called police who came and retrieved it. *Id*. Rhonda said she does not know where the gun came from, it did not belong to Alonzo or her. *Id*. She said that both Travaris and Carter had access to the area of the home where the pistol was found. [T. 173-74].

The pistol, a Jimenez Arms 9-millimeter, was submitted to the Mississippi Crime Lab for comparison analysis to the ballistic evidence. [T. 194, 186-88, 225-26, 306; Ex. 6]. It was determined that all of the projectiles and cartridge casings recovered in relation to Robert and Renita's deaths were fired from the weapon that Rhonda found in the cabinet. [T. 308-09].

Alonzo, who was also charged as a principle in this case, testified for the state with a deal that the capital murder and other charges against him would be dropped upon his open plea to house burglary which had not occurred yet. [T. 311, 318, 321]. Alonzo testified that he did indeed drop Travaris and Carter off in Terry on the night in question. [T. 310-11].

Alonzo testified that the Sunday before the incident, Carter told him he had "a lick" to hit, but, Alonzo told Carter he was not interested. [T. 313-14, 319]. According to Alonzo, Carter said he was "going to break into his brother's house." *Id*. Alonzo,

nevertheless, then introduced Carter to his nephew Travaris and thereafter Carter and Travaris "had a conversation." [T. 314]. The next day Monday January 24, Travaris and Carter came to Alonzo and asked for a ride to Terry. [T. 315, 317]. Alonzo testified that Carter and Travaris had a Buick Skylark and Alonzo drove them in the Skylark to Terry. [T. 315, 317; Ex. S-26]. Alonzo said Travaris told him about the planned burglary of Robert's house, but Alonzo said there was never any plan to shoot anyone. [T. 316, 320]. Alonzo said he would not have given Carter and Travaris a ride if he knew someone was going to get shot. [T. 321].

Alonzo told police that the 9-millimeter pistol found at his house belonged to Travaris and the he never saw Carter with that weapon. [T. 320]. He said he saw Travaris with the gun on the day before the killing. *Id*. Investigators recovered recordings of jail telephone conversations that Travaris had with his family in which he states that he was the last person to touch the pistol found in Alonzo's house. [T. 298; Ex. D-33].

SUMMARY OF THE ARGUMENT

The trial court erred reversibly in allowing the introduction of alleged other bad act evidence against Carter by way of hearsay. There was insufficient proof of felonious child neglect under Count Five and the verdict was contrary to the weight of evidence. The trial court gave an improper instruction on conspiracy which did not conform to the indictment.

ARGUMENT

ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCTION OTHER ALLEGED BAD ACT EVIDENCE VIA HEARSAY?

The defense filed a Motion in Limine regarding alleged prior bad act evidence under Miss. R. Evid. 403 and 404 (b).[1] [R. 92]. There were also specific objections to the prior alleged bad acts suggested in the testimony of Renata Marks about alleged altercations between Robert and Carter prior to the homicides, including testimony that

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[1] M.R.E. 403 states:
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger o f unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

M.R.E. 404(b) states:
Evidence of other crimes, wrongs, or acts is not permissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Renita told Renata that Carter allegedly attempted to "run over" Robert and that Carter and his mother "jumped on" Renita. [T. 255, 261-65, 275]. The trial judge overruled the objections without any stated findings in the record pertaining to the prejudice versus probative value of this evidence. *Id*.

The repetition by Renata of what Renita allegedly told her is also rank hearsay which could not be challenged by cross-examination of the declarant. Miss. R. Evid. 801, 803; U. S. Const. Amend VI; Miss. Const. (1890) Art. 3 § 26.

Under Miss. R. Evid. 403, evidence must be excluded, even if relevant, where the risk of undue prejudice outweighs the probative value of the evidence against which the objection is made. *Simmons v. State*, 813 So. 2d 710, 716 (Miss. 2002). "Prejudicial evidence that has no probative value is always inadmissible." *Roberson v. State*, 595 So. 2d 1310, 1315 (Miss. 1992); *Smith v. State*, 530 So. 2d 155, 160-61 (Miss. 1988).

The incompetent hearsay testimony about Carter allegedly trying to run over Robert and jumping on Renita in the context of an ongoing family disagreement was inflammatory, excessive and irrelevant rendering Carter's trial unfair. None of the Rule 404(b) exceptions were claimed by the state and none apply. The admission of irrelevant other bad act evidence constitutes reversible error. *Hargett v. State,* 62 So. 3d 950, 953 (¶ 9) (Miss. 2011). (See also, *Darby v. State*, 538 So. 2d 1168, 1173 (Miss. 1989); *Rose v. State*, 556 So. 2d 728, 732 (Miss. 1990)).

Introduction of this evidence against Carter was not harmless. In *Gallion v. State*,

469 So. 2d 1247, 1249-50 (Miss. 1985), the court said, "evidence which is incompetent and inflammatory in character carries with it a presumption of prejudice." *Id.*

The only purpose the state had in introducing this evidence was to prejudice the jury by making Carter appear to be a dangerous person which is grounds for reversal.

In *Flowers v. State*, 842 So. 2d 531, 540-51 (¶¶ 25-51) (Miss. 2003), the defendant was charged with separate counts of capital murder involving multiple victims, tried separately. In the trial of one, the prosecution introduced evidence of the other three killings which occurred in the same location but different parts of the building. The Supreme Court reversed holding the introduction of evidence of the other killings was prejudicial, rejecting the State's theories that this evidence was proper under Rule 404 or to tell a complete story. Carter respectfully requests that the Court apply *Flowers* and the authorities cited above and grant him a new trial on all charges not reversed and rendered.

ISSUE NO. 2: WHETHER THE EVIDENCE OF FELONY CHILD NEGLECT UNDER COUNT FIVE WAS INSUFFICIENT OR WHETHER THE VERDICT IN COUNT FIVE WAS CONTRARY TO THE WEIGHT OF EVIDENCE?

To have made a case of felonious child neglect under section 97-5-39 (1)(d) in Count Five, the state was required to prove that Carter "willfully, unlawfully and knowingly" deprived Robert Carter, Jr., of food, care or supervision which resulted in

"substantial harm to the child's physical, mental or emotional health."[2]

The lay testimony was that the child appeared to be un-cared for and unattended, "[t]here was a child at the time was screaming and crying. I immediately noticed that the child appeared to had not been taken care for a numerous amount of time." (Sic). [T. 149]. The child's diaper was "soaked and full of urine." [T. 150]. Other responding deputies found some baby formula and gave the child a bottle. [T. 150, 164].

The homicides here were committed late Monday night January 24, or early Tuesday morning January 25 and the child was found Wednesday afternoon January 26. The state's pathologist expert, who did not examine the child or reference review of any medical records related to the child, was not even ask to give an opinion on "substantial harm", rather was asked, "[w]hat are the outlooks (sic) for that child at seven months old" assumed to have been left unattended for "up to two full days?" [T. 330]. The pathologists obvious answer was, "[i]t would certainly be a very traumatic situation for that child ... certainly any infant or toddler requires quite a bit of care." *Id*. So, there was neither lay nor expert testimony that the child suffered "substantial harm."

We have no working definition of "substantial harm." "Substantial harm" under the present statute is discussed in *Lenard v. State*, 51 So. 3d 239, 247 (¶¶ 27-28) (Miss. Ct. App. 2011), but no definition is offered. By comparison the definition of "serious

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[2] The indictment charged a violation of "§97-5-39 (1)(b)." The charges should have been listed as a violation of subsection (1)(d). The statute allows the charges to arise from reckless or wilful conduct, but the indictment here only states a wilful and knowing offense. [R. 7; RE 18].

bodily harm" in the context of child abuse is "bodily injury which creates a substantial risk of death, or permanent or temporary disfigurement, or impairment of any bodily organ or function." *Wolfe v. State*, 743 So. 2d 380, 385 (¶24) (Miss. 1999). Carter respectfully suggests that "traumatic situation" as suspected by the pathologist here does not equate to "substantial harm." Therefore, the only arguable offense committed in relation to the child here was misdemeanor neglect under section 97-5-39(1). *Buffington v. State,* 824 So. 2d 576, 582 (¶¶ 23-24) (Miss. 2002).

Considering a motion for directed verdict, if the evidence and reasonable inferences therefrom "point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty," the single remedy for an appellate court is to reverse and render. *Edwards v. State*, 469 So. 2d 68, 70 (Miss. 1985). See also *Sands v. State*, 62 So. 3d 374, 378 (¶ 20) (Miss. 2011); *Carr v. State*, 208 So. 2d 886, 889 (Miss. 1968).

Under this issue, the appellate court should review the "lower court's ruling on the sufficiency of the evidence based on the evidence before the court at the time the last challenge was made." *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *Scarborough v. State*, 956 So. 2d 382, 385-86 (Miss. Ct. App. 2007). The question then is whether there was evidence to support a conclusion, beyond a reasonable doubt, that the child here suffered "substantial harm," if not, the evidence is insufficient to support the conviction. *Bush v. State*, 895 So. 2d 836, 843(¶ 16) (Miss. 2005). All evidence and reasonable

inferences reasonably available therefrom are to be viewed in the light most favorable to the verdict. *McClain*, 625 So. 2d at 778.

There was no evidence from which an inference could be drawn that Carter or Travaris intentionally caused the child to suffer "substantial harm." Count Five should never have gone to the jury for deliberation, and Carter respectfully requests an acquittal of his felonious child neglect conviction for insufficient evidence.

Otherwise, the verdict in Count Five is contrary to the weight of evidence resulting in a miscarriage of justice and a new trial is respectfully requested. *Kelly v. State*, 910 So. 2d 535, 539-40 (Miss. 2005); *Brown v. State*, 829 So. 2d 93, 103 (Miss. 2002).

ISSUE NO. 3: WHETHER THE TRIAL COURT ERRED IN GRANTING INSTRUCTION S-7 REGARDING CONSPIRACY?

Over the defense's objection the trial court granted the following instruction, S-7 - Jury Instruction No. 15:

> Count Four of the indictment charges the Defendant with Conspiracy. If you find from the evidence in this case beyond a reasonable doubt that:
>
> 1. On or about the 24th day of January, 2011, within the First Judicial District of Hinds County, Mississippi, that the Defendant in this case, Dwaliue Deon Carter;
>
> 2. Did willfully, unlawfully, and feloniously conspire and agree with Alonzo Christian and Travaris Richard Christian, **or either of said persons**, to commit a crime against the State of Mississippi, to-wit: to burglarize the dwelling house of Robert Lewis Carter; Then you shall find the Defendant guilty of Conspiracy, however, if the State has failed to prove any one or more of the foregoing elements, then you shall find the Defendant not guilty. [R. 171, 186; RE 21; T. 343-44]. [Emphasis added].

Note that the instruction allows conviction of Carter for conspiring with Travaris or Alonzo. This varied from the indictment which charged in Count Four a conspiracy of all three men, stating:

> Travaris Richard Christian, Alonzo Christian and Dwaliue Deon Carter, did willfully, unlawfully, and feloniously conspire and agree each with the other to commit a crime against the State of Mississippi, to-wit: to burglarize the dwelling house of Robert Lewis Carter, located at 1323 Timberidge Rd., Terry, Mississippi, said object of said conspiracy being a felony, in violation of Mississippi Code Annotated §97-1-1 (1972), as amended. [R. 7]

The indictment returned by the grand jury charged a conspiracy between all three co-defendants where the elemental jury instruction for Count Four gave the jury the option of convicting with only two conspirators. The error in granting S-7 is that the instruction reduced the state's burden of proof drastically by eliminating the requirement that the state prove that Alonzo was part of the conspiracy.

Granting S-7 was error because, the state is always bound by the indictment returned by the grand jury. According to *Richmond v. State*, 751 So. 2d 1038, 1046 (Miss. 1999), the State is required to prove any unnecessary elements alleged in an indictment. In *Richmond*, the defendant was charged with auto theft and the indictment included a dollar value for the vehicle which was not a statutory element. *Id*. at 1042. The *Richmond* court stated that "[h]aving specifically informed Richmond of the offense charged, as well as the detailed code section number, the State handicapped itself through this indictment by adding an unnecessary element of proof." *Id*. at 1046.

In *Harrell v. State* 148 Miss. 718, 114 So. 815 (1927), the defendant was indicted for "assault and battery with intent to kill" with a "pistol." The evidence showed that the assault might have been made with the defendant's "hands and fists." *Id*. At the state's request, the trial court gave the jury instructions that if the assault was made with a pistol or the defendant's hands and fist, in either instance, the jury could find the defendant guilty as charged. *Id*.

In reversing, the *Harrell* court said,

> [t]he question therefore is whether under the law a defendant, charged in an indictment with the crime of assault and battery with intent to kill and murder, where the indictment describes the weapon with which the alleged assault and battery was committed, can be convicted of an assault and battery inflicted by a weapon entirely different from that set out in the indictment. We think not. *Id*. (Citation omitted).

The court explained that under Article 3, §26 of the Mississippi Constitution (1890):

> a defendant is entitled to be informed by the indictment against him as to the nature and cause of the accusation which he is to meet. This provision of the Constitution has a twofold purpose. It is to secure to the defendant, charged with crime, such a specific description of the offense as will enable him to make preparation for his trial, and also such an identification of the offense as will insure him against a subsequent prosecution therefor. *Id*. (Citations omitted).

In *Hunter v. State*, 684 So. 2d 625, 636-37 (Miss. 1996), the court said, "[a]nd although no rule or precedent requires that an instruction mirror the exact language of a criminal statute, we have held that 'the jury must be correctly and fully instructed regarding each element of the offense charged.'" (Citation omitted). In *Neal v. State*, 15

So. 3d 388, 397 (Miss. 2009), the court said the "purpose of jury instructions is to tell the jury what facts they have to find and who has the burden of proving or disproving those facts."(citing *Harris v. State*, 861 So. 2d 1003, 1016 (Miss. 2003)). Therefore, it is a "'fundamental error' to fail to instruct the jury of the essential elements of a crime." *Reddix v. State*, 731 So. 2d 591, 592-93 (¶19 et seq.) (Miss. 1999).

In *Reddix*, the defendant was convicted of aggravated assault. At trial, the court granted an elements instruction which excluded statutory elements of aggravated assault. *Id*. The case was reversed, in part, on the grounds that since the jury never passed on the elements of the offense, there is no way for the jury to determine if the state has met its burden of proof. Here in Carter's case, the Court does not know if the jury found Alonzo to be a co-conspirator or not as charged.

In *Sisk v. State*, 260 So. 2d 485, 487 (Miss. 1972), the Court considered the propriety of granting an instruction which did not conform to the issues raised by the indictment. The indictment charged the accused with wilfully defrauding the victim. However, the jury was instructed to determine whether the defendant "wilfully defrauded or attempted to defraud" another. *Id*. The court concluded that there was a material variance in the "attempt to defraud" language and found that it was reversible error to grant the instruction. *Id*. A variance in a jury instruction is material if it affects the substantive rights of the defendant. *Upshaw v. State*, 350 So. 2d 1358, 1362 (Miss. 1977).

Here the erroneous instruction is material and prejudicial to Carter because Alonzo

never acknowledged any agreement to participate in a burglary or robbery. [T. 314]. In fact, Alonzo purportedly told Carter, "I don't do no licks and I never have and I never will." *Id.* Admittedly, Alonzo said he knew that Carter and Travaris had allegedly planned a burglary and gave them a ride down to Terry, but Alonzo also said he never talked with Carter and Travaris about the burglary. [T. 316-17]. The point is that with his testimony, the jury could have found that Alonzo did not join in any conspiracy. Since the instruction did not conform to the indictment, there is a likelihood that the guilty verdict was based on the jury finding that Carter only conspired with Travaris but not with Alonzo. If this is the case, then Carter was convicted of a felony for which he was not indicted and thus denied due process of law. *Hall v. State*, 127 So. 3d 202 (Miss. 2013). Carter respectfully requests that his conspiracy conviction under count 3 be reversed and that he be granted a new trial.

CONCLUSION

For the forgoing reasons, Carter respectfully requests that the convictions under Count Five be reversed and rendered, and requests a new trial on all remaining counts.

Respectfully submitted,

DWALIUES DEON CARTER

By: /s/ George T. Holmes
George T. Holmes, His Attorney

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 14th day of May, 2015, electronically filed the foregoing Brief with the Clerk of the Court using the MEC system which issued electronic notification of such filing to Hon. John R. Henry, Jr., Assistant Mississippi Attorney General; and, counsel also this day mailed a hard copy to the following persons not notified by the MEC system by U. S. Mail, first class postage prepaid: Hon. Winston L. Kidd, Circuit Judge, P. O. Box 327 , Jackson MS 39205, and to Hon. Tom Kesler, Asst. Dist. Attorney, P. O. Box 22747, Jackson MS 39225.

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