

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00611 COA

BETTY JOAN YORK

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HENRY ROSS

COURT FROM WHICH APPEALED: CIRCUIT COURT OF WINSTON COUNTY

ATTORNEYS FOR APPELLANT:

LAUREL S. WEIR

THOMAS L. BOOKER

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES W. MARIS, JR. DISTRICT ATTORNEY: DOUG EVANS

NATURE OF THE CASE: CRIMINAL: POSSESSION OF MORE THAN AN OUNCE OF MARIJUANA BUT LESS THAN A KILOGRAM WITH INTENT TO DISTRIBUTE

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO 20 YEARS IN CUSTODY OF MDOC AND FINED \$10,000

MANDATE ISSUED: 9/2/97

BEFORE THOMAS, P.J., PAYNE, AND SOUTHWICK, JJ.

PAYNE, J., FOR THE COURT:

This is a criminal appeal from the Circuit Court of Winston County wherein Betty Joan York was convicted of possession of more than an ounce of marijuana but less than a kilogram with the intent to distribute. The trial court sentenced York to twenty years in the custody of the Mississippi Department of Corrections and fined her \$10,000. Feeling aggrieved, York appeals arguing: (1) ineffective assistance of counsel; (2) her sentence was excessive; (3) the trial court gave improper jury instructions and failed to give other instructions; (4) sufficiency of the evidence; (5) the search warrant was invalid; and (6) the verdict is against the weight of the evidence. Finding no error, we affirm.

#### STATEMENT OF THE FACTS

Police discovered Christine Hanna to be in possession of marijuana. Hanna named Betty Joan York (Appellant) as her supplier and agreed to purchase marijuana from York in a controlled buy. Hanna went to York's residence with \$100 in marked twenty dollar bills and returned with marijuana. The police then obtained a search warrant for York's residence. Upon execution of the search warrant at York's home, the police discovered marijuana in several locations throughout the house, including purses, and the marijuana totaled 1.84 ounces in weight. The police also found \$868 in cash inside a purse which included the marked money given to Hanna, another \$82 in cash inside a "pocketbook," nine loaded guns, scales, rolling papers, assorted pills, syringes, and a list of names and dollar amounts.

#### ARGUMENT AND DISCUSSION OF THE LAW

I. IT IS CLEAR THAT YORK DID NOT HAVE ASSISTANCE OF COMPETENT COUNSEL AT THE TRIAL OF HER CAUSE AND THAT HER SIXTH AMENDMENT RIGHT TO THE MISSISSIPPI CONSTITUTION AND U.S. CONSTITUTION WERE VIOLATED

York asserts that she was denied effective assistance of counsel. She supports her assertion with the fact that her attorney was subsequently suspended from practicing law in Mississippi, and York also points to specific instances which she argues illustrate that her counsel was ineffective. The standard of review for an ineffective assistance of counsel argument is the two-prong test: (1) counsel's performance was deficient, and (2) counsel's deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

The Mississippi Supreme Court adopted the *Strickland* standard for an ineffective assistance of counsel argument in *Stringer v. State*, 454 So. 2d 468, 476-77 (Miss. 1984). *See McQuarter v. State*, 574 So. 2d 685, 687 (Miss. 1990). "The burden is on the defendant to demonstrate both prongs." *McQuarter*, 574 So. 2d at 687 (citing *Leatherwood v. State*, 473 So. 2d 964, 968-69 (Miss. 1985)). This standard is based upon the totality of the circumstances surrounding each case. *Id.* (citing *Waldrop v. State*, 506 So. 2d 273, 275 (Miss. 1987)).

Mississippi "recognizes a strong but rebuttable presumption that counsel's conduct falls within a broad range of reasonable professional assistance. *Id.* (citing *Gilliard v. State*, 462 So. 2d 710, 714

(Miss. 1985)). The court recognizes that "[t]o overcome this presumption, [t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Schmitt v. State*, 560 So. 2d 148, 154 (Miss. 1990) (quoting *Strickland*, 466 U.S. at 694). There is also a presumption that counsel's decisions are strategic. See *Handley v. State*, 574 So. 2d 671, 684 (Miss. 1990) (citation omitted); *Leatherwood v. State*, 473 So. 2d 964, 968-69 (Miss. 1985).

Initially, York points out that her trial was the first of its type for the district attorney who prosecuted her and also that her trial counsel was subsequently suspended from practicing law in Mississippi. While both of these contentions may be true, York fails to cite any authority nor does she establish how such factors affected the performance of her counsel at trial. Failure to cite authority waives the issue on appeal. *Holloman v. State*, 656 So. 2d 1134, 1141 (Miss. 1995) (citing *Magee v. State*, 542 So. 2d 228, 234 (Miss. 1989)). Additionally, York bears the burden on appeal to show deficient performance at trial and prejudice as a result therefrom. *McQuarter v. State*, 574 So. 2d at 687. York has failed on both prongs.

York also contends that the following list of alleged errors by her trial counsel: (1) failure to object to questions posed to York about her use of marijuana; (2) failure to object to a witness's testimony regarding the list of names and dollar amounts seized from York's home; (3) failure to object to questions regarding the scales and syringes retrieved from York's home; (4) failure to object to questions regarding York's son; (5) failure to challenge discovery violations; (6) failure to challenge the affidavit and search warrant; (7) failure to object to improper hearsay and other evidence; (8) failure to challenge alleged Miranda violation; (9) failure to object to the jury instructions submitted by the State; and (10) failure to submit jury instructions. First, we note that regarding these alleged instances of ineffective assistance of counsel, only the first requires any discussion by this Court because York fails to provide any authority or demonstrate any prejudicial error. Instead, York simply provides a laundry list of alleged errors with no more than mere general statements claiming error and no demonstration of actual error or prejudice. We further note that the record does not support all of these alleged errors. In regard to alleged errors (2) through (10), York has failed to meet her burden on appeal. See *Johnson v. State*, 626 So. 2d 631, 634 (Miss. 1993) (part of the Appellant's burden on appeal is to support her assigned errors on appeal with reasons and authorities); see also *Conner v. State*, 684 So. 2d 608, 614 (Miss. 1996) ("Absent any meaningful argument, this Court is not obligated to entertain an assignment of error."); *Baine v. State*, 604 So. 2d 249, 255 (Miss. 1992) ("In the absence of meaningful argument and citation of authority, this Court generally will not consider an assignment of error.").

As to York's contention that her trial counsel failed to object to questions posed to York about her use of marijuana, we find her arguments unpersuasive. Specifically, York objects to the prosecutor's being able to question her on cross-examination about where she got the marijuana and

whether she smoked marijuana currently or in the past. York, however, fails to recognize that these questions followed her attempt to explain that the marijuana she had in her possession was old and leftover from a time in which she smoked marijuana. First, we note the scope of cross-examination is broad but limited, within the sound discretion of the trial court, to relevant matters. *Heflin v. State*, 643 So. 2d 512, 517-18 (Miss. 1994). Mississippi Rule of Evidence 611(b) deals with the scope of

cross-examination and states that "[c]ross-examination shall not be limited to the subject matter of the direct examination and matters affecting the credibility of the witness." M.R.E. 611(b). "Under this wide-open cross-examination any matter may be probed that is relevant." *Id.* cmt. Furthermore, York has failed to demonstrate that counsel's failure to object was not strategic. It appears from both the trial transcript and York's brief on appeal that she admits to possession of the marijuana. At trial, York admitted prior marijuana use and attempted to attribute the marijuana found in her purses to a prior period of time in which she smoked marijuana. We cannot say that the State improperly questioned her as to where she got the marijuana and whether she was a user at the time her home was searched in light of York's testimony. We find that the prosecutor's questions fell within the wide scope of cross-examination. York has failed to demonstrate that her counsel's performance in this instance was deficient.

The record reveals that York's trial counsel made both an opening statement and a closing argument, presented evidence in York's defense, made pre-trial motions, conducted a pre-trial investigation, vigorously cross-examined the State's witnesses, and made objections throughout the trial. We have considered York's claim using the appropriate test, and find that trial counsel's performance does not rise to the level necessary to support a finding of constitutionally ineffective assistance of counsel. York's trial counsel enjoys a strong presumption of competence, and we

cannot say that the trial below would have turned out differently for York had her trial counsel performed otherwise. *See Robinson v. State*, 585 So.2d 735, 737 (Miss. 1991). Accordingly, we find this issue to be without merit.

## II. THE CAUSE MUST BE REVERSED AND REMANDED IF APPELLANT IS NOT ACQUITTED HERE.

Under this assignment of error, York requests that this Court remand her cause so that she may be allowed to raise new issues including those listed in her motion for new trial/ JNOV. Also before this Court is York's "Motion to Remand or for the Court to Consider Affidavit of Betty Joan York and Her Husband, Bobby York." In her motion, York requests that her cause be remanded to the trial court for an evidentiary hearing to determine whether or not she "obtained a fair and impartial trial and with an efficient attorney . . . ." York's motion was passed for consideration on the merits of the appeal. In part I, we discussed the merits of York's ineffective assistance of counsel claim and we need not revisit it here. Additionally, we find her motion to be premature under the authority announced in *Vielee v. State*. *See Vielee v. State*, 653 So. 2d 920, 921-22 (Miss. 1995) (a motion to stay the appeal and proceed in the trial court on the issue of ineffective assistance of counsel was a premature filing for post-conviction relief.) We find York's second assignment of error to be without merit and dismiss her motion.

## III. THE SENTENCE OF THE LOWER COURT IS EXCESSIVE AND DEPRIVES YORK OF HER EIGHTH AMENDMENT CONSTITUTIONAL RIGHTS AND THE COURT ERRED IN PERMITTING CONVICTION OF ANY OFFENSE OTHER THAN POSSESSION OF A CONTROLLED SUBSTANCE AND IMPROPER INSTRUCTIONS WERE GIVEN BY THE LOWER COURT.

York essentially asserts two arguments under this assignment of error: (a) her sentence was excessive, and (2) the trial court's instructions to the jury differed from the indictment which resulted

in a higher level of proof for the State which York claims it did not meet, and she should have only been convicted of simple possession rather than possession with the intent to sell.

While recognizing York's challenge to her sentence was not properly preserved for appeal in that she failed to object at trial, Failure to object at trial and give the trial court the opportunity to address the issue procedurally bars an issue on appeal. *Davis v. State*, 660 So. 2d 1228, 1255-56 (Miss. 1995). we find the merits of her argument to be unpersuasive. Very simply, York was sentenced within the statutory guideline set forth in section 41-29-139. *See* M.C.A. 41-29-139 (Rev. 1993). Section 41-29-139(b)(2) provides for a maximum sentence of twenty years or fine of not more than \$30,000, or both. M.C.A. 41-29-139(b)(2) (Rev. 1993). York was sentenced to twenty years which is within the sentence prescribed by statute. *Id.* Additionally, York was ordered to pay a \$10,000 fine which is also within the confines of the statute. *Id.* The Mississippi Supreme Court has long held that no sentence will be disturbed that is within the statutory maximum. *See Reynolds v. State*, 585 So. 2d 753, 756 (Miss. 1991) ("[t]he imposition of a sentence is within the discretion of the trial court, and this Court will not review the sentence, if it is within the limits prescribed by statute") (citing *Reed v. State*, 536 So. 2d 1336, 1339 (Miss. 1988); *Boyington v. State*, 389 So. 2d 485, 491 (Miss. 1980)); *see also Fleming v. State*, 604 So. 2d 280, 302 (Miss. 1992) ("the general rule in this state is that a sentence cannot be disturbed on appeal so long as it does not exceed the maximum term allowed by statute") (citing *Corley v. State*, 536 So. 2d 1314, 1319 (Miss. 1988); *Reed v. State*, 536 So. 2d 1336, 1339 (Miss. 1988)). York was sentenced by the trial court to twenty years; thus, her sentence does not exceed the maximum sentence prescribed by the statute. We find no merit in York's attack on the length of her sentence.

We also find no merit in York's claim that she should have only been convicted of simple possession rather than possession with intent to distribute because of the difference between the indictment and the instruction to the jury. First, York's failure to cite any authority waives this issue

on appeal. *Holloman*, 656 So. 2d at 1141. Additionally, we find the substance of York's argument unpersuasive. York points out that the indictment The indictment reads in pertinent part, "with the wilful, unlawful and felonious intent to sell, transfer, deliver *and* distribute the said marijuana . . . ." (Emphasis added). includes "and" while the instructions Instruction S-1, which was read to the jury, reads in pertinent part, ". . . at the time, Betty Joan York intended to sell, barter, transfer *or* distribute. (Emphasis added). to the jury contained "or." We add that the statute Section 41-29-139(a)(1) reads in pertinent part:

(1) To sell, barter, transfer, manufacture, distribute, dispense *or* possess with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance;

41-29-139(a)(1) (emphasis added). uses the disjunctive "or." York then summarily concludes that the indictment was never amended.

The Mississippi Supreme Court has said:

It is a general rule that where a statute denounces as an offense two or more distinctive acts, things, or transactions enumerated therein in the disjunctive, the whole may be charged conjunctively and the defendant found guilty of either one. This Court seems to have followed this general rule in cases involving other statutes.

*Lenoir v. State*, 237 Miss. 620, 622, 115 So.2d 731, 731-32 (1959). In *Lenoir*, as in the present case, the indictment read that a series of acts or means of carrying out the crime were joined by "and," rather than "or" as provided by the statute. *Id.* On appeal, the court found no error. *Id.* Accordingly, we find York's third assignment of error to be without merit.

#### IV. THE COURT ERRED IN NOT GIVING A CAUTIONARY INSTRUCTION AND ESPECIALLY CONCERNING THE TESTIMONY OF CHRISTINE HANNA.

York contends that the testimony of Christine Hanna was contradictory and was not reliable and that the trial court erred in failing to sua sponte grant a cautionary instruction pursuant to *Edwards v. State*, 630 So. 2d 343 (Miss. 1994). *Edwards* states "when the prosecution bases its case solely on the testimony of an accomplice corroborated only by a confidential informant, then it is mandatory that the trial judge grant the cautionary instruction." *Edwards*, 630 So. 2d at 344. However, in the present case in addition to the testimony of Hanna, the State produced the evidence seized from York's home including the marked bills given to Hanna for the purchase, marijuana, cash, guns, and scales. The State also presented the testimony of the officers who arranged for the controlled buy and who also followed Hanna to York's home. Unlike in *Edwards*, the State was able to produce corroborating evidence. We find this issue to be without merit.

#### V. ERROR EXISTS IN FINDING APPELLANT GUILTY OF THE MORE SEVERE OFFENSE.

York argues that the amount of marijuana seized from her possession is an amount which a person could reasonably hold for personal use. She contends that the State did not prove that the amount of marijuana she possessed exceeded a personal consumption amount.

Essentially York is attacking the sufficiency of the evidence against her. The Mississippi Supreme Court has stated:

[T]he sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence consistent with [York's] guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

*McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993) (citations omitted). Here, the evidence was legally sufficient to find that York possessed the marijuana with the intent to distribute it.

"In order for the evidence to be sufficient to establish possession with intent to sell or deliver, the State must prove intent beyond a reasonable doubt." *Holland v. State*, 656 So. 2d 1192, 1195 (Miss. 1995) (citing *Esparaza v. State*, 595 So. 2d 418, 427 (Miss.1992)). "The intent to sell or

distribute contraband may be established by circumstantial evidence." *Holland*, 656 So. 2d at 1195. Assuming this quantity of marijuana was an amount commensurate with personal use, it was necessary for the State to introduce additional evidence to turn this case from simple possession to a conviction of possession with intent to distribute. *Id.* (citing *Roberson v. State*, 595 So. 2d 1310,

1319 (Miss. 1992) ("where the contraband is in an amount which a person could reasonably hold for personal use, other evidence of intent is necessary"); *Breckenridge v. State*, 472 So. 2d 373, 378 (Miss.1985)).

In the present case, the State introduced evidence of the controlled buy including the testimony of Christine Hanna and the officers who arranged for Hanna to make the buy. The State also introduced the testimony regarding the evidence seized from York's residence including scales, guns, and a substantial amount of cash including the marked bills given to Hanna by police. Taking all of this evidence in the light most favorable to the State, we cannot say that the State failed to prove York possessed the marijuana with the intent to sell or distribute the marijuana. Therefore, we find York's attack on the sufficiency of the evidence to be without merit.

**VI. ERROR EXISTS IN THE ISSUE OF THE SEARCH WARRANT AND MAKING OF THE AFFIDAVIT AND THE COURT ERRED IN NOT SUSTAINING THE OBJECTION TO THE SAME AT THE MOTION HEARING AND ERRED IN PERMITTING TRIAL COUNSEL TO REHASH THAT ISSUE BEFORE THE TRIAL JURY.**

In her sixth assignment of error, York attacks the search warrant claiming it included prejudicial testimony on the return, that it failed to correctly describe the place to be searched, that the testimony is in great contradiction, and that Christine Hanna was not reliable. York cites the Mississippi Constitution in support of these assertions.

The Mississippi Supreme Court has held that, "descriptions in search warrants are sufficient if the places and things to be searched are designated in such a manner that the officer making the search may locate them with reasonable certainty." *Williams v. State*, 583 So. 2d 620, 624 (Miss. 1991); *Hamilton v. State*, 556 So. 2d 685, 689 (Miss. 1990). Where officers not only could, but did, locate property by means of the description contained in the warrant, that factor is evidence the legal description was sufficient. *Pool v. State*, 483 So. 2d 331, 334 (Miss. 1986). In the present case the search warrant identifies the location to be searched as York's residence and describes the location by mileage and directions including street names. Clearly, this information was sufficient for the officers to locate the home with reasonable certainty.

The court has said:

A search warrant may only be issued when the police have demonstrated probable cause by introducing evidence of underlying facts and circumstances before the magistrate granting the warrant. Probable cause exists when facts and circumstances within an officer's knowledge, or of which he has reasonable trustworthy information, are sufficient within themselves to justify a man of average caution in the belief that a crime has been committed and that a particular person committed it. The affidavit is the means of presenting to the issuing magistrate a basis upon which he may determine whether in fact probable cause exists. In reviewing a magistrate's finding of probable cause, this Court does not make a de novo determination of probable cause, but only determines if there was a substantial basis for the magistrate's determination of probable cause.

*Barrett v. Miller*, 599 So. 2d 559, 566 (Miss. 1992) (citations omitted). *See also Williams v. State*, 583 So. 2d 620, 622 (Miss. 1991).

Essentially, York attacks the search warrant based on the credibility of Hanna. However, the police did not obtain the search warrant based solely upon information from Hanna. Rather, they arranged for Hanna to make a purchase from York with marked money. The police then followed Hanna to York's home, observed her enter and exit the home, and followed her back to the post-buy meeting. At that time Hanna gave the police the marijuana she had purchased from York. The police then sought the search warrant. In addition to the controlled buy, the police were also aware of other dealings that the Tri-County Narcotics Unit had in the past with York. There was sufficient information for the judge to issue the search warrant. We find that the search warrant was supported by probable cause and gave a sufficient description of the place to search and the items to be seized. Accordingly, we hold that the trial court was correct in finding that the search warrant for York's home was valid and this issue is without merit.

#### VII. THE DECISION IS CONTRARY TO THE OVERWHELMING WEIGHT OF THE LAW AND EVIDENCE AND IS NOT SUPPORTED BY ANY LAW OR EVIDENCE.

In York's final assignment of error, she attempts to revisit the issue of Christine Hanna's testimony. Additionally, she asserts that she was denied a fair trial and attempts to point out conflicts in the testimony. York does not substantiate her claims with any authority. Once again, York's failure to cite authority waives the issue on appeal. *Holloman*, 656 So. 2d at 1141. However, in the interest of fairness, we will address York's attack on the weight of the evidence. The Mississippi Supreme Court has held that "[t]he jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed." *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993) (citations omitted); *see also Burrell v. State*, 613 So. 2d 1186, 1192 (Miss. 1993) (witness credibility and weight of conflicting testimony are left to the jury); *Kelly v. State*, 553 So. 2d 517, 522 (Miss. 1989) (witness credibility issues are to be left solely to the province of the jury). Furthermore, "the challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion." *McClain*, 625 So. 2d at 781 (citing *Wetz v. State*, 503 So. 2d 803, 807-08 (Miss. 1987)). The decision to grant a new trial "rest[s] in the sound discretion of the trial court, and the motion [for a new trial based on the weight of the evidence] should not be granted except to prevent an unconscionable injustice." *Id.* This Court will reverse only for abuse of discretion, and on review will accept as true all evidence favorable to the State. *Id.*

In the present case, the jury heard the evidence presented by both the State and by York in her own defense. The jury's decision to believe the State's evidence and witnesses was well within its discretion. Moreover, the jury was well within its power to weigh the evidence and the credibility of York's testimony and to convict her. We do not find that the jury's verdict was so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to promote an unconscionable injustice.

Finally, York makes a one sentence reference to *Miranda* warnings. Specifically, York states: " Even though *Mississippi Rule* 1.03 concerning *Miranda* warnings require them to be given prior to questioning evidence was admitted as to what appellant told officers without the use of the *Miranda* warning." York fails to make any meaningful argument and does not direct this Court to that portion of the record which supports her contention. We have reviewed the record and cannot determine the basis for York's assertion. We are unable to address York's contention and need not do so in light of

her failure to meet her burden on appeal. *See Johnson v. State*, 626 So. 2d 631, 634 (Miss. 1993) (part of the Appellant's burden on appeal is to support her assigned errors on appeal with reasons and authorities); *see also Conner v. State*, 684 So. 2d 608, 614 (Miss. 1996) ("Absent any meaningful argument, this Court is not obligated to entertain an assignment of error."); *Baine v. State*, 604 So. 2d 249, 255 (Miss. 1992) ("In the absence of meaningful argument and citation of authority, this Court generally will not consider an assignment of error.").

We find York's final assignment of error to be without merit.

**THE JUDGMENT OF THE CIRCUIT COURT OF WINSTON COUNTY OF CONVICTION OF POSSESSION OF MORE THAN AN OUNCE OF MARIJUANA BUT LESS THAN A KILOGRAM WITH INTENT TO DISTRIBUTE, AND SENTENCE TO TWENTY YEARS IN CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND FINE OF \$10,000 IS AFFIRMED WITH INSTRUCTIONS FOR THE TRIAL COURT TO AMEND THE JUDGMENT TO REFLECT CONVICTION OF THE CRIME OF POSSESSION OF MORE THAN ONE OUNCE BUT LESS THAN ONE KILOGRAM OF MARIJUANA WITH INTENT TO SELL, TRANSFER, DELIVER, OR DISTRIBUTE. SENTENCE IMPOSED SHALL BE SERVED CONSECUTIVELY TO ANY SENTENCE PREVIOUSLY IMPOSED. ALL COSTS OF THIS APPEAL ARE TAXED TO WINSTON COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND SOUTHWICK, JJ., CONCUR.**