

**COPY**

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**KING YOUNG BROWN**

**APPELLANT**

**FILED**

**VS.**

**DEC 11 2007**

**NO. 2006-KA-0315-COA**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: DESHUN T. MARTIN  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. 101526**

**OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS .....	1
SUMMARY OF THE ARGUMENT .....	3
THE ARGUMENT .....	6
PROPOSITION I.	
THE JURY INSTRUCTION WAS PROPER. ....	6
PROPOSITION II.	
THE TRIAL COURT DID NOT ERR IN ALLOWING RELEVANT EVIDENCE. ....	7
PROPOSITION III.	
THE TRIAL COURT DID NOT VIOLATE THE APPELLANT'S VI AMENDMENT RIGHT OF CONFRONTATION. ....	9
PROPOSITIONS IV., VII., VIII., and XI. are combined.	
THE TRIAL COURT DID NOT ERR IN ITS REFUSAL TO GRANT APPELLANT'S MOTION FOR A NEW TRI WITHSTANDING THE VERDICT. THE VERDICT WAS WELL WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE. ....	10
PROPOSITION V.	
THE TRIAL COURT DID NOT ERR IN ALLOWING RELEVANT EVIDENCE. ....	13
PROPOSITION VI.	
DENIAL OF DUE PROCESS DID NOT OCCUR. ....	13
PROPOSITION IX.	
THE TRIAL COURT WAS PROPER IN LIMITING THE CROSS EXAMINATION OF THE STATE'S FINGERPRINT EXPERT. ....	14
PROPOSITION X.	
THE JURY WAS PROPERLY IMPANELED. ....	15
CONCLUSION .....	17
CERTIFICATE OF SERVICE .....	18

## TABLE OF AUTHORITIES

### FEDERAL CASES

**Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993) . 8, 9, 15**

### STATE CASES

<b>Boyd v. State, 754 So.2d 586, 590 (Miss. App. 2000) .....</b>	<b>4, 12</b>
<b>Brassfield v. State, 905 So.2d 754 (Miss. App. 2004) .....</b>	<b>7</b>
<b>Brown v. State, 556 So.2d 338 (Miss. 1990) .....</b>	<b>12</b>
<b>Bullock v. State, 391 So.2d 601, 606 (Miss. 1980) .....</b>	<b>4, 12</b>
<b>Bush v. State, 895 So.2d 836, 843 (Miss. 2005) .....</b>	<b>11</b>
<b>Carr v. State, 208 So.2d 886,889 (Miss.1968) .....</b>	<b>11</b>
<b>Clemons v. State, 460 So.2d 835, 839 (Miss. 1984) .....</b>	<b>4, 12</b>
<b>Coleman v. State, 697 So. 2d 777, 784 (Miss. 1997) .....</b>	<b>13</b>
<b>Davis v. State, 530 So.2d 694 (Miss. 1988) .....</b>	<b>12</b>
<b>Dilworth v. State, 909 So.2d 731, 741 (Miss. 2005) .....</b>	<b>11</b>
<b>Dobbs v. State, 950 So.2d 1029 (Miss. 2006) .....</b>	<b>3, 7</b>
<b>Edwards v. State, 615 So.2d 590, 594 (Miss. 1993) .....</b>	<b>4, 12</b>
<b>Forbes v. State, 437 So.2d 59, 60 (Miss. 1983) .....</b>	<b>4, 12</b>
<b>Hart v. State, 637 So.2d 1329, 1340 (Miss. 1994) .....</b>	<b>4, 12</b>
<b>Kelly v. State, 493 So.2d 356, 359 (Miss. 1986) .....</b>	<b>7</b>
<b>May v. State, 460 So.2d 778, 781 (Miss. 1984) .....</b>	<b>11, 12</b>
<b>McClain v. State, 625 So.2d 774 (Miss. 1993) .....</b>	<b>11</b>
<b>Mooneyham v. State, 915 So.2d 1102 (Miss. App. 2005) .....</b>	<b>8</b>

<b>Norman v. State, 385 So.2d 1298, 1303 (Miss. 1980) .....</b>	<b>7</b>
<b>Smith v. State, 826 So.2d 768, 770 (Miss. App. 2002) .....</b>	<b>4, 10</b>
<b>Smith v. State, 835 So.2d 927, 934 (Miss. 2002) .....</b>	<b>3, 6, 7</b>
<b>State.” Winters v. State, 473 So.2d 452, 459 (Miss. 1985) .....</b>	<b>11</b>
<b>Watkins v. U-Haul International, Inc., 770 So.2d 970, 973 (Miss. App. 2000) .....</b>	<b>8</b>

## STATE RULES

<b>Mississippi Rule of Evidence 401 .....</b>	<b>3, 4, 6, 7, 13, 14</b>
<b>Mississippi Rule of Evidence 611(b) .....</b>	<b>6, 14</b>
<b>Mississippi Rule of Evidence 702 .....</b>	<b>8</b>
<b>Mississippi Rule of Evidence 703 .....</b>	<b>3, 7</b>

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**KING YOUNG BROWN**

**APPELLANT**

**VS.**

**NO. 2006-KA-0315-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

This is an appeal against a judgment of the Circuit Court of Washington County, Mississippi, in which the Appellant, King Young Brown, Jr., was convicted and sentenced for the felony crimes of **MANSLAUGHTER** and **RAPE** in direct violation of the laws of the State of Mississippi.

**STATEMENT OF FACTS**

On or about 20<sup>th</sup> day of April, 2002, in Washington County, Mississippi, the Appellant, King Young Brown, Jr., (Brown), did unlawfully, wilfully, feloniously, and with malice aforethought, did then and there kill and murder Robernisha Nicole Webster, a minor / child human being. ( R. E. 9).

Also, on or about 20<sup>th</sup> day of April, 2002, in Washington County, Mississippi, Appellant Brown did unlawfully, wilfully, feloniously and forcibly rape and ravish Robernisha Nicole Webster, a minor / child human being under the age of twelve years, by having sexual intercourse with Robernisha Nicole Webster against her will and without her consent. ( R. E. 9).

Robernisha Webster was a six-year-old little girl in kindergarten at Ella Darling here in

Greenville. Robernisha was last seen on April 20, 2002, that Saturday afternoon. Robernisha and her mother had gone over to her grandparents' house so that her mother could take care of her grandmother, Robernisha's great grandmother. Robernisha asked her Ma'ma could she go over to the park and swing. Her mother said ok. Then Robernisha came home at one point. She said Ma'ma, there's some big boys over there. I don't want to be over there right now. I'm going to come on back home. Later on, Robernisha asked her mama could she go back, and her mother allowed her. Robernisha went to that park to swing, but she never returned home again. Scientific evidence / proof, fingerprints of the Appellant found on the top of the bag where he taped it up after he placed her cold body in it. The Appellant's pubic hairs found on the outside of the inner bag that her cold, dead body was placed in. Evidence showed that those pubic hairs matched to that of the Appellant through DNA evidence through DNA testing. The evidence showed that head hairs which had the same characteristics of the victim to a degree of scientific certainty were found in the lint trap of the Appellant's home. Also, head hairs of the same characteristics of both the victim, Miss Robernisha Webster, and Brown were on a pillowcase that was thrown in the trash inside his home. The Appellant had a white pullover shirt in the dirty clothes bag in his room and there were head hairs of the same characteristics of that of Robernisha Webster on that white shirt. Robernisha Webster's body was found in a garbage can at the back door of the Brown's house. Robernisha Webster's body was placed in two bags. Brown used those bags to keep cans. But this time Brown placed the body of little Robernisha Webster into these bags. (Tr. 899 - 903).

The Appellant was sentenced to twenty (20) years in the custody of the Mississippi Department of Corrections for the Manslaughter charge. ( R. E. 296). The Appellant was sentenced to thirty (30) years in the custody of the Mississippi Department of Corrections for the Rape charge. ( R. E. 297). Both sentences are to run consecutively one to the other. ( R. E. 297).

## **SUMMARY OF THE ARGUMENT**

### **I.**

#### **THE JURY INSTRUCTION WAS PROPER.**

The Mississippi Supreme Court held in Smith v. State, 835 So.2d 927, 934 (Miss. 2002) that when considering a challenge to a jury instruction on appeal, the Court does not review jury instructions in isolation; rather, it reads them as a whole to determine if the jury was properly instructed. Dobbs v. State, 950 So.2d 1029 (Miss. 2006) holds that when read as a whole, if the jury instructions fairly announce the law of the case and create no injustice, then no reversible error will be found.

### **II.**

#### **THE TRIAL COURT DID NOT ERR IN ALLOWING RELEVANT EVIDENCE.**

Mississippi Rule of Evidence 401, RELEVANT EVIDENCE:

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Mississippi Rule of Evidence 703. BASES OF OPINION TESTIMONY BY EXPERTS:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

### **III.**

#### **THE TRIAL COURT DID NOT VIOLATE THE APPELLANT'S VI AMENDMENT RIGHT OF CONFRONTATION.**

United States Constitution: VI Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public

trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

**IV., VII., VIII., and XI. are combined.**

**THE TRIAL COURT DID NOT ERR IN ITS REFUSAL TO GRANT APPELLANT'S MOTION FOR A NEW TRIAL AND IN THE ALTERNATIVE A JUDGMENT NOT WITHSTANDING THE VERDICT. APPELLANT'S MOTIONS FOR DIRECTED VERDICT AND MISTRIAL WERE PROPERLY DENIED. THE VERDICT WAS WELL WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

Smith v. State, 826 So.2d 768, 770 (Miss. App. 2002) holds that in determining whether a jury verdict is against the overwhelming weight of the evidence, the Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial.

In judging the legal "sufficiency," as opposed to "weight," of the evidence on a motion for a directed verdict or request for peremptory instruction or motion for judgment notwithstanding the verdict, the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. Hart v. State, 637 So.2d 1329, 1340 (Miss. 1994); Edwards v. State, 615 So.2d 590, 594 (Miss. 1993); Clemons v. State, 460 So.2d 835, 839 (Miss. 1984); Forbes v. State, 437 So.2d 59, 60 (Miss. 1983); Bullock v. State, 391 So.2d 601, 606 (Miss. 1980); Boyd v. State, 754 So.2d 586, 590 (Miss. App. 2000).

**V.**

**THE TRIAL COURT DID NOT ERR IN ALLOWING RELEVANT EVIDENCE.**

Mississippi Rule of Evidence 401, RELEVANT EVIDENCE:



"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

## **VI.**

### **DENIAL OF DUE PROCESS DID NOT OCCUR.**

United State Constitution: IV Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution: V Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution: VI Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United State Constitution: XIV Amendment § I:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **IX.**

### **THE TRIAL COURT WAS PROPER IN LIMITING THE CROSS EXAMINATION OF THE STATE'S FINGERPRINT EXPERT.**

Mississippi Rule of Evidence 611(b):

**(b) Scope of Cross-Examination.** Cross-examination shall not be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.

Mississippi Rule of Evidence 401, RELEVANT EVIDENCE:

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

## **X.**

### **THE JURY WAS PROPERLY IMPANELED.**

United States Constitution: VI Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## **THE ARGUMENT**

### **PROPOSITION I.**

#### **THE JURY INSTRUCTION WAS PROPER.**

Appellant's counsel wrongly contends that jury instruction, S - 6 / an instruction regarding manslaughter, should not have been issued to jury. (Appellant Brief 15).

The Mississippi Supreme Court held in Smith v. State, 835 So.2d 927, 934 (Miss. 2002) that when considering a challenge to a jury instruction on appeal, the Court does not review jury instructions in isolation; rather, it reads them as a whole to determine if the jury was properly

instructed. Dobbs v. State, 950 So.2d 1029 (Miss. 2006) holds that when read as a whole, if the jury instructions fairly announce the law of the case and create no injustice, then no reversible error will be found.

Brassfield v. State, 905 So.2d 754 (Miss. App. 2004) holds that instructions should clearly inform jury of elements of crimes and State's burden of proof, and there was no risk that jury was confused about elements of crime necessary to convict.

The Court does not review jury instructions in isolation; rather, it reads them as a whole to determine if the jury was properly instructed. Smith v. State, 835 So.2d 927, 934 (Miss. 2002), Kelly v. State, 493 So.2d 356, 359 (Miss. 1986) and Norman v. State, 385 So.2d 1298, 1303 (Miss. 1980). Reading the jury instructions as a whole, all elements to the crime of manslaughter are present and properly stated.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

## **PROPOSITION II.**

### **THE TRIAL COURT DID NOT ERR IN ALLOWING RELEVANT EVIDENCE.**

Brown's counsel contends that the trial court should have held a hearing regarding admissibility of the microscopic hair comparisons. (Appellant Brief 20).

Mississippi Rule of Evidence 401, RELEVANT EVIDENCE:

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Mississippi Rule of Evidence 703. BASES OF OPINION TESTIMONY BY EXPERTS:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in

evidence.

The analytical framework provided by the modified Daubert standard requires the trial court to perform a two-pronged inquiry in determining whether the expert testimony is admissible under Mississippi Rule of Evidence 702. Under Mississippi Rule of Evidence 702 expert testimony should be admitted only after a two pronged inquiry. First, the witness must be qualified as an expert because of the knowledge, skill, experience, training, or education he or she possesses. Mississippi Rule of Evidence 702. Second, the witness's scientific, technical, or other specialized knowledge must assist the trier of fact. Watkins v. U-Haul International, Inc., 770 So.2d 970, 973 (Miss. App. 2000), Mooneyham v. State, 915 So.2d 1102 (Miss. App. 2005), and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993).

The aforementioned two part test was met, and the trial judge ruled that the State's expert's testimony was relevant.

Emil Lyon was properly certified as an expert in the field of Forensic Hair Examination as per the record. (Tr. 1825 - 1827). Emil Lyon's testimony verified that the victim and the perpetrator had human hair, head and pubic hair, in and around their environment.

- 3 Q. And what did you find when you compared  
4 the known hairs of King Brown, Junior, to the hairs  
5 found on the outer surface of the inner bag  
6 containing the body of Robernisha Webster?  
7 A. Pubic hairs of Negroid origin which  
8 exhibit the same microscopic characteristics as  
9 those in Submission 51-4, one head hair fragment of  
10 Negroid origin which exhibits the same microscopic  
11 characteristics as those in Submission 3, hairs  
12 and/or hair fragments of Negroid origin which do not  
13 exhibit sufficient characteristics for body hair  
14 determination or comparison.  
15 Q. All right. When you say the same  
16 microscopic characteristics, what do you mean?  
17 A. Well, at the Mississippi Crime Lab, we can

18 either exclude a hair, or we can say that it's not  
19 possible to exclude it, or we can say that it must  
20 be included, and in this case, I could not exclude  
21 those hairs as being from Mr. Brown, those pubic  
22 hairs, so they were indistinguishable from his  
23 knowns. (Tr. 1840).

12 A. (BY THE WITNESS) It's my opinion that  
13 these two people shared the same environment, I  
14 mean, the number of exchanges and the number of  
15 hairs with the same characteristics of each person  
16 that are in that environment and the items that came  
17 from that environment. I certainly would not be  
18 able to exclude either one of those two people from  
19 having shared the same environment. (Tr. 1859).

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

### **PROPOSITION III.**

#### **THE TRIAL COURT DID NOT VIOLATE THE APPELLANT'S VI AMENDMENT RIGHT OF CONFRONTATION.**

United States Constitution: VI Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Appellant's counsel contends that Chris Larson, who it says actually performed the analysis, was available to testify and should have testified. (Appellant Brief 23).

Amrita Lal-Paterson was properly qualified in the record (Tr. 1950 - 1955) as an expert in the field of DNA as per Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993).

EXHIBIT NUMBER S-109 is the DNA chart which completely explains that the perpetrator's DNA was in, on, and around the environment of the victim, Robernisha Nicole

Webster.

12       A. The conclusion that we came -- that was  
13       reported was that King Brown, Junior could not be  
14       excluded as being a donor to either of the two  
15       hairs. Now, one hair gave us results for 11 of the  
16       13 markers that we were testing for. The other hair  
17       gave us results for all 13 markers that were tested  
18       for. The statistical conclusion that was reported  
19       was that the genetic profile of the DNA donor in the  
20       sample, the hair sample, occurs with a frequency of  
21       occurrence of one in greater than 10 billion persons  
22       of either the Caucasian race, the African-American  
23       race, or Hispanic race.  
24       Basically, what that means is to see that  
25       profile again, you would need greater than 10  
26       billion people of any of those races that I  
27       mentioned. (Tr. 1970 - 1971).

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

**PROPOSITIONS IV., VII., VIII., and XI. are combined.**

**THE TRIAL COURT DID NOT ERR IN ITS REFUSAL TO GRANT  
APPELLANT'S MOTION FOR A NEW TRIAL AND IN THE  
ALTERNATIVE A JUDGMENT NOT WITHSTANDING THE VERDICT.  
THE VERDICT WAS WELL WITH THE OVERWHELMING WEIGHT OF  
THE EVIDENCE.**

Smith v. State, 826 So.2d 768, 770 (Miss. App. 2002) holds that in determining whether a jury verdict is against the overwhelming weight of the evidence, the Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial.

The State counters that the jury heard all of the evidence, exhibits and testimony, and the members of the jury believed the evidence produced by the prosecution. The jury verdict should stand.

The correct standard as stated above in Smith, is to take the evidence presented by the

prosecution as true together with reasonable inferences. The evidence cited in the record, taken as true together with reasonable inference is more than sufficient evidence in support of the jury's verdict. Furthermore, weight and sufficiency of the evidence will be discussed in detail below.

The applicable standard of review is found in Dilworth v. State, 909 So.2d 731, 741 (Miss. 2005) and Bush v. State, 895 So.2d 836, 843 (Miss. 2005). The standard of review for a post-trial motion is abuse of discretion.

In Carr v. State, 208 So.2d 886,889 (Miss.1968) the court held:

We stated that in considering whether the evidence is sufficient to sustain a conviction in the face of a motion for directed verdict or for judgment notwithstanding the verdict, the critical inquiry is whether the evidence shows 'beyond a reasonable doubt that accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction.' However, this inquiry does not require a court to 'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Reasonably, matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. "Weight" implicates the denial of a motion for a new trial while "sufficiency" implicates the denial of motions for directed verdict, peremptory instruction, and judgment notwithstanding the verdict. May v. State, 460 So.2d 778, 781 (Miss. 1984).

In other words, the remedy for a defect in "weight" is a new trial while the remedy for a defect in "sufficiency" is final discharge from custody.

Where a defendant has made post-trial motions assailing the sufficiency of the evidence, "... the trial court must consider all of the evidence - not just the evidence which supports the State's case - in the light most favorable to the State." Winters v. State, 473 So.2d 452, 459 (Miss. 1985). See also McClain v. State, 625 So.2d 774 (Miss. 1993). This includes the defendant's evidence, if

any, which must be construed in a light most favorable to the prosecution's theory of the case.

In judging the legal "sufficiency," as opposed to "weight," of the evidence on a motion for a directed verdict or request for peremptory instruction or motion for judgment notwithstanding the verdict, the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. Hart v. State, 637 So.2d 1329, 1340 (Miss. 1994); Edwards v. State, 615 So.2d 590, 594 (Miss. 1993); Clemons v. State, 460 So.2d 835, 839 (Miss. 1984); Forbes v. State, 437 So.2d 59, 60 (Miss. 1983); Bullock v. State, 391 So.2d 601, 606 (Miss. 1980); Boyd v. State, 754 So.2d 586 (Miss. App. 2000).

If under this standard, sufficient evidence to support the jury's verdict of guilty exists, the motion for a directed verdict and request for peremptory instruction or JNOV should be overruled. Brown v. State, 556 So.2d 338 (Miss. 1990); Davis v. State, 530 So.2d 694 (Miss. 1988). As stated previously, a finding that evidence is insufficient results in a discharge of the defendant. May v. State, 460 So.2d 778, 781 (Miss. 1984).

Put another way, the trial court, and this Court on appeal as well, must accept the State's evidence as true and view it in a light most favorable to the State's theory of the case.

The State counters that the jury heard all of the evidence, exhibits and testimony, and the members of the jury believed the evidence produced by the prosecution. The jury verdict should stand.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.



## **PROPOSITION V.**

### **THE TRIAL COURT DID NOT ERR IN ALLOWING RELEVANT EVIDENCE.**

Mississippi Rule of Evidence 401, "RELEVANT EVIDENCE:"

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The photographs were relevant evidence. Evidentiary rulings are within the broad discretion of the trial court and will not be reversed absent an abuse of discretion. Coleman v. State, 697 So. 2d 777, 784 (Miss. 1997).

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

## **PROPOSITION VI.**

### **DENIAL OF DUE PROCESS DID NOT OCCUR.**

United State Constitution: IV Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution: V Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution: VI Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been

committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United State Constitution: XIV Amendment § I:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Washington County Deputy Sheriff Ricky Spratlin had probably cause that a crime occurred as preserved in the record, (Tr. 1659 - 1705), principally manslaughter and rape, that involved the perpetrator, Brown, and the victim, Robernisha Nicole Webster. The record shows that the seizure of Brown's blood, hair, and saliva samples were done properly.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

#### **PROPOSITION IX.**

#### **THE TRIAL COURT WAS PROPER IN LIMITING THE CROSS EXAMINATION OF THE STATE'S FINGERPRINT EXPERT.**

Mississippi Rule of Evidence 611(b):

**(b) Scope of Cross-Examination.** Cross-examination shall not be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.

Mississippi Rule of Evidence 401, RELEVANT EVIDENCE:

"Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The State's fingerprint expert, John Byrd, was properly qualified in the aforementioned field

as per Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 (1993). Brown's counsel cross was limited because of irrelevant questions.

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

## **PROPOSITION X.**

### **THE JURY WAS PROPERLY IMPANELED.**

United States Constitution: VI Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Appellant's counsel contends that an African - American juror was dismissed for being out of his hotel room and for not following directions by talking to other people. (Appellant Brief).

The following is what occurred with this suspect juror:

9           BY THE COURT: It's about six minutes  
10       til one. Let me give you a hypothetical.  
11       The juror is sequestered, leaves his room,  
12       goes out into the hallway to meet with a  
13       family member to either retrieve money or  
14       to communicate with a family member. Mr.  
15       Parker had already retrieved the items  
16       that the family member was going to bring  
17       to the juror. Mr. Parker is already in or  
18       going back in his room. That transaction  
19       is over, and the juror comes back out into  
20       the hall. Ms. Parker, coming up the  
21       elevator from the ice machine, just  
22       happens to be up there and stops the  
23       transaction.  
24       Opinions of the State as to what we  
25       should do with the juror.  
26       BY MS. BRIDGES: Judge, is there any

27 communication between the juror and -- I'm  
28 not entirely following your scenario here.  
29 The juror has requested certain items from  
1 home? Is that --  
2 BY THE COURT: That was already taken  
3 care of. Mr. Parker had told the family  
4 member to bring them to the clerk.  
5 Apparently, the clerk sent her to Mr.  
6 Parker's room. Mr. Parker had already  
7 retrieved that. That had already been  
8 done.  
9 BY MS. BRIDGES: Okay. And then the  
10 juror steps out into the hall. Is there  
11 communication between the juror and the  
12 other person?  
13 BY THE COURT: I don't know if  
14 there's communication, but what bothers me  
15 is that he stepped out into the hall.  
16 BY MS. BRIDGES: And is not following  
17 directions.  
18 BY THE COURT: Correct.  
19 BY MS. BRIDGES: Okay.  
20 BY MR. RICHARDSON: And did you state  
21 that Ms. Parker stopped the transaction?  
22 BY THE COURT: Correct.  
23 BY MR. RICHARDSON: And saying that  
24 just means stopping the communication  
25 between them?  
26 BY THE COURT: Because she was going  
27 to give him money, and she stopped that  
28 transaction, so, clearly, he went out in  
29 the hall either to have communication with  
1 or retrieve money from this person, and  
2 that's what bothers me, not that anything  
3 was said or not, but that he didn't follow  
4 my instructions.  
5 BY MS. BRIDGES: Right. (Tr. 1640 - 1643).

The State would submit that this issue brought by the Appellant is therefore lacking in merit.

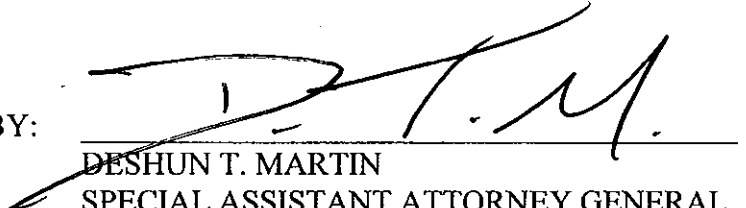
**CONCLUSION**

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the jury verdict and sentence of the trial court.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:

  
\_\_\_\_\_  
DESHUN T. MARTIN  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. 101526

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680

## CERTIFICATE OF SERVICE

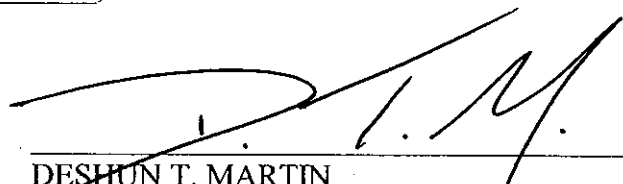
I, Deshun T. Martin, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Richard A. Smith  
Circuit Court Judge  
Post Office Box 1953  
Greenwood, MS 38935-1953

Honorable Joyce I Chiles  
District Attorney  
Post Office Box 426  
Greenville, MS 38702

Brandon I. Dorsey, Esquire  
Attorney At Law  
Post Office Box 13427  
Jackson, MS 39236-3427

This the 11th day of December, 2007.



\_\_\_\_\_  
DESHUN T. MARTIN  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680